Tab 1	**CS/CS/HJR 1** by **SAC, WMC, Tomkow (CO-INTRODUCERS) Benjamin, Brown, Buchanan, Casello, Chaney, Fabricio, Fernandez-Barquin, Fetterhoff, Gregory, Hunschofsky, Killebrew, Latvala, Learned, Massullo, Morales, Overdorf, Rizo, Robinson, W., Salzman, Toledo, Willhite, Zika**; (Similar to CS/S 01746) Additional Homestead Property Tax Exemption for Specified Critical Public Service Workforce

Tab 2	**CS/HB 3** by **APC, Leek, Brannan (CO-INTRODUCERS) Beltran, Botana, Buchanan, Bush, Chambliss, DiCeglie, Fabricio, Fetterhoff, Gregory, Hawkins, Ingoglia, Latvala, Maggard, Massullo, Morales, Overdorf, Payne, Rizo, Rommel, Roth, Shoaf, Sirois, Snyder**; (Compare to S 02500) Law Enforcement Officer, Benefits, Recruitment, and Training

Tab 3	**SB 196** by **Rodriguez**; (Similar to CS/H 00137) Florida Housing Finance Corporation

518736	PCS	S	RCS	AP, ATD		03/01 08:56 PM
395542	A	S	RCS	AP, Rodriguez	Delete L.46 - 77:	03/01 08:56 PM
~~151346~~	A	S	WD	AP, Brandes	btw L.192 - 193:	03/01 08:56 PM
193088	A	S	UNFAV	AP, Brandes	btw L.192 - 193:	03/01 08:56 PM

Tab 4	**SB 268** by **Diaz**; (Similar to CS/H 00395) Proclamation of "Victims of Communism Day"

430822	PCS	S	RCS	AP, AED	03/01 09:25 AM

Tab 5	**CS/SB 466** by **HP, Torres (CO-INTRODUCERS) Wright, Book, Taddeo, Stewart, Jones, Cruz, Rouson, Gibson, Powell, Ausley, Bracy, Burgess, Harrell, Perry, Pizzo, Diaz, Rodrigues, Hooper, Farmer**; (Compare to CS/H 00131) Military Medics and Corpsmen of Florida Program

501066	D	S	RS	AP, Torres	Delete everything after	03/01 08:59 PM
529498	SD	S	RCS	AP, Torres	Delete everything after	03/01 08:59 PM

Tab 6	**SB 536** by **Diaz**; (Compare to CS/CS/H 00337) Administrative Procedures

734958	D	S	FAV	AP, Diaz	Delete everything after	02/28 09:12 PM

Tab 7	**CS/SB 554** by **MS, Cruz (CO-INTRODUCERS) Rodrigues, Taddeo, Stewart**; (Identical to CS/H 00045) Educational Opportunities for Disabled Veterans

Tab 8	**CS/SB 988** by **HP, Garcia (CO-INTRODUCERS) Berman, Rodriguez, Perry**; (Compare to CS/CS/H 00987) Patient Visitation Rights

799882	D	S	RCS	AP, Garcia	Delete everything after	03/02 12:14 PM

Tab 9	**CS/SB 1010** by **HP, Gibson**; (Similar to CS/CS/CS/H 00543) Uterine Fibroid Research and Education

920488	A	S	RCS	AP, Gibson	Delete L.28 - 69:	03/01 09:20 AM

Tab 10	**CS/SB 1040** by **CF, Brodeur**; (Compare to CS/H 00733) Special Persons Registry

751752	PCS	S		AP, AHS	02/24 04:47 PM

Tab 11	**CS/SB 1042** by **CF, Brodeur**; (Similar to H 00735) Public Records/Special Persons Registry

873190	PCS	S		AP, AHS		02/24 04:47 PM

Tab 12	**CS/CS/SB 1078** by **EE, EN, Hutson**; (Compare to CS/H 00783) Soil and Water Conservation Districts

785588	A	S		RCS	AP, Hutson	Delete L.93 - 95:	03/01 09:05 PM
465108	AA	S	L	RCS	AP, Hutson	Delete L.9:	03/01 09:05 PM
359308	A	S	L	RCS	AP, Hutson	Delete L.128 - 133:	03/01 09:05 PM
520516	A	S	L	RCS	AP, Hutson	Delete L.37 - 42:	03/01 09:05 PM

Tab 13	**CS/SB 1292** by **BI, Gruters (CO-INTRODUCERS) Bradley**; (Similar to CS/CS/CS/H 00749) Fraud Prevention

895176	PCS	S	RCS	AP, AEG		03/02 12:17 PM
880686	A	S	RCS	AP, Gruters	btw L.245 - 246:	03/02 12:17 PM

Tab 14	**CS/SB 1302** by **RI, Burgess (CO-INTRODUCERS) Perry**; (Compare to CS/H 00087) Criminal History Information

761772	D	S	RCS	AP, Burgess	Delete everything after	03/02 12:19 PM

Tab 15	**CS/SB 1382** by **FT, Gruters**; (Similar to CS/CS/H 01041) Tax Administration

604478	D	S	RCS	AP, Gruters	Delete everything after	03/01 09:09 PM
799108	AA	S	RCS	AP, Gruters	Delete L.700:	03/01 09:09 PM

Tab 16	**CS/SB 1426** by **EN, Burgess**; (Similar to CS/CS/CS/H 00965) Environmental Management

666660	PCS	S	RCS	AP, AEG		03/01 09:14 PM
638546	A	S	RS	AP, Burgess	Delete L.86 - 185:	03/01 09:14 PM
897990	SA	S	RCS	AP, Burgess	Delete L.86 - 255:	03/01 09:14 PM
157718	A	S	RCS	AP, Burgess	Delete L.270 - 280:	03/01 09:14 PM

Tab 17	**SB 1476** by **Wright (CO-INTRODUCERS) Perry**; (Similar to H 00357) Prescription Drug Coverage

Tab 18	**CS/CS/HB 1557** by **JDC, EEC, Harding (CO-INTRODUCERS) Borrero, Fernandez-Barquin, Fine, Latvala, Maggard, Roach, Roth, Snyder**; (Similar to S 01834) Parental Rights in Education

~~760288~~	A	S	WD	AP, Brandes	Delete L.98:	03/01 05:12 PM
546314	SA	S	UNFAV	AP, Brandes	Delete L.98:	03/01 05:12 PM

Tab 19	**CS/CS/HB 1563** by **SAC, WMC, Tomkow (CO-INTRODUCERS) Brown, Bush, Casello, Fabricio, Fernandez-Barquin, Fetterhoff, Gregory, Hunschofsky, Rizo, Robinson, W., Salzman, Snyder, Willhite, Woodson**; (Similar to CS/S 01748) Homestead Property Tax Exemptions for Classroom Teachers, Law Enforcement Officers, Firefighters, Emergency Medical Technicians, Paramedics, Child Welfare Professionals, and Servicemembers

Tab 20	**CS/SB 1610** by **FT, Rodriguez (CO-INTRODUCERS) Pizzo**; (Compare to CS/H 00071) Abatement of Ad Valorem Taxes and Non-ad Valorem Assessments for Residential Improvements Destroyed Due to a Sudden and Unforeseen Collapse

445234	A	S	RCS	AP, Rodriguez	Delete L.68 - 70:	03/02 12:20 PM

Tab 21	**CS/SB 1670** by **MS, Hutson**; (Compare to CS/H 07055) Cybersecurity

272518	D	S	RCS	AP, Hutson	Delete everything after	03/02 12:25 PM

Tab 22	**CS/SB 1694** by **MS, Hutson**; (Compare to CS/H 07057) Public Records and Public Meetings/Cybersecurity Incident or Ransomware Incident

570256	D	S	RCS	AP, Hutson	Delete everything after	03/02 12:28 PM

Tab 23	**CS/SB 1710** by **CF, Bradley (CO-INTRODUCERS) Brandes, Brodeur**; (Similar to CS/CS/CS/H 01349) Guardianship

483144	D	S	RS	AP, Bradley	Delete everything after	02/28 09:16 PM
208562	SD	S	FAV	AP, Bradley	Delete everything after	02/28 09:16 PM

Tab 24	**CS/SB 1728** by **BI, Boyd**; (Compare to CS/CS/H 01307) Property Insurance						
646840	PCS	S			AP, AEG		02/18 09:36 AM
892324	PCS:D	S		RCS	AP, Boyd	Delete everything after	03/02 09:49 AM
700006	PCS:AA	S		UNFAV	AP, Rouson	Delete L.1910 - 1921.	03/02 09:49 AM
336290	PCS:AA	S	L	UNFAV	AP, Rouson	Delete L.1888 - 1909.	03/02 09:49 AM

Tab 25	**CS/SB 1796** by **JU, Gruters (CO-INTRODUCERS) Rodriguez, Hooper, Diaz**; (Similar to CS/CS/H 01395) Dissolution of Marriage						
797882	A	S		RS	AP, Gruters	Delete L.316 - 625:	02/28 09:27 PM
836940	AA	S		OO	AP, Gruters	Delete L.32 - 36:	02/28 09:27 PM
144186	SA	S	L	FAV	AP, Gruters	Delete L.316 - 625:	02/28 09:27 PM
855360	ASA	S	L	UNFAV	AP, Pizzo	Delete L.171 - 174:	02/28 09:27 PM

Tab 26	**CS/SB 1874** by **BI, Boyd**; (Similar to CS/CS/CS/H 00959) Department of Financial Services						
565284	PCS	S		RCS	AP, AEG		03/02 12:33 PM
325996	A	S		RCS	AP, Boyd	Delete L.431 - 461.	03/02 12:33 PM

Tab 27	**CS/SB 1940** by **EN, Brodeur (CO-INTRODUCERS) Stewart, Rodriguez**; (Similar to CS/H 07053) Statewide Flooding and Sea Level Rise Resilience

Tab 28	**CS/SB 1950** by **HP, Brodeur**; (Compare to H 00607) Statewide Medicaid Managed Care Program						
625186	PCS	S			AP, AHS		02/18 04:39 PM
376938	A	S		RCS	AP, Brodeur	Delete L.220 - 249:	03/02 10:11 AM
567896	A	S		RCS	AP, Brodeur	Delete L.573 - 636:	03/02 10:11 AM
977740	AA	S	L	RCS	AP, Bean	Delete L.5:	03/02 10:11 AM
399056	A	S		RCS	AP, Brodeur	Delete L.690 - 692:	03/02 10:11 AM
963780	A	S		RCS	AP, Brodeur	Delete L.761 - 813:	03/02 10:11 AM
329278	AA	S	L	RCS	AP, Bean	Delete L.5:	03/02 10:11 AM

Tab 29	**HB 5011** by **APC, Trumbull**; (Compare to S 02500) Budgeting for Inflation that Drives Elevated Needs Fund						
147946	D	S		FAV	AP, Hutson	Delete everything after	03/01 09:37 AM

Tab 30	**HB 5015** by **APC, Perez**; (Compare to S 02500) Evaluation of Significant State Risks						
392560	D	S		FAV	AP, Hutson	Delete everything after	03/01 09:41 AM

Tab 31	**HB 5301** by **SAT, Stevenson**; (Compare to S 02500) Capitol Center						
521994	D	S		FAV	AP, Albritton	Delete everything after	03/02 12:53 PM

Tab 32	**SB 7046** by **GO**; (Similar to H 05007) Public Employment

Tab 33	**CS/SB 160** by **TR, Harrell**; (Compare to H 00037) Transportation-related Facility Designations						
915896	PCS	S		RCS	AP, ATD		03/01 09:24 AM

Tab 34	**CS/SB 358** by **HP, Rodriguez**; (Similar to CS/H 01521) Professional Counselors Licensure Compact						
712708	PCS	S		RCS	AP, AHS		03/01 03:39 PM

Tab 35	**SB 390** by **Book (CO-INTRODUCERS) Rodrigues, Gibson, Stewart**; (Identical to H 00235) Restraint of Students with Disabilities in Public Schools

Tab 36	**CS/SB 398** by **TR, Hooper**; (Compare to CS/CS/1ST ENG/H 00157) Transportation Projects						
353234	PCS	S		RCS	AP, ATD		03/01 03:41 PM
~~639566~~	PCS:D	S		WD	AP, Hooper	Delete everything after	02/28 08:50 AM
~~129426~~	PCS:AA	S		WD	AP, Diaz	Delete L.361:	02/28 09:16 AM

Tab 37	**SB 552** by **Boyd (CO-INTRODUCERS) Ausley, Wright**; (Compare to CS/H 00397) Clerks of the Circuit Court					
589784	PCS	S		RCS	AP, ACJ	03/01 03:43 PM

Tab 38	**CS/CS/SB 578** by **CA, BI, Hooper**; (Similar to CS/CS/H 00837) Hurricane Loss Mitigation Program					
949840	A	S		RCS	AP, Hooper	Delete L.45 - 90: 03/02 12:13 PM

Tab 39	**CS/SB 752** by **CJ, Gainer (CO-INTRODUCERS) Pizzo**; (Identical to H 00387) Probationary or Supervision Services for Misdemeanor Offenders					
529550	PCS	S		RCS	AP, ACJ	03/01 03:44 PM

Tab 40	**CS/SB 768** by **HP, Rodriguez**; (Similar to CS/CS/H 00693) Department of Health						
134610	A	S		RCS	AP, Rouson	btw L.139 - 140:	03/01 09:22 PM
~~910204~~	A	S		WD	AP, Rodriguez	Delete L.140 - 155:	03/01 09:22 PM
~~313234~~	A	S		WD	AP, Rodriguez	Delete L.305 - 327:	03/01 09:22 PM
361620	A	S		RCS	AP, Rodriguez	btw L.456 - 457:	03/01 09:22 PM
603264	A	S		RCS	AP, Rodriguez	btw L.1494 - 1495:	03/01 09:22 PM
209168	A	S	L	RCS	AP, Rodriguez	btw L.456 - 457:	03/01 09:22 PM
~~709480~~	A	S	L	WD	AP, Rodriguez	btw L.641 - 642:	03/01 09:22 PM
~~124218~~	A	S	L	WD	AP, Rodriguez	btw L.641 - 642:	03/01 09:22 PM

Tab 41	**SB 802** by **Gruters (CO-INTRODUCERS) Perry, Polsky, Rodrigues**; (Similar to CS/CS/CS/H 01421) School Safety					
347860	PCS	S		RCS	AP, AED	03/01 03:50 PM

Tab 42	**CS/SB 898** by **CA, Stewart (CO-INTRODUCERS) Perry, Taddeo, Book, Berman, Bracy, Polsky, Cruz, Jones, Garcia, Powell, Torres**; (Compare to CS/CS/CS/H 00577) Tenant Safety						
~~296406~~	A	S		WD	AP, Brandes	Delete L.43:	02/28 09:56 AM

Tab 43	**CS/SB 1060** by **ED, Hutson**; (Similar to CS/H 00461) Florida Bright Futures Scholarship Program Student Service Requirements

Tab 44	**CS/SB 1210** by **EN, Albritton**; (Identical to CS/H 00909) Pollution Control Standards and Liability

Tab 45	**SB 1358** by **Rouson**; (Similar to H 01011) Task Force on the Monitoring of Children in Out-of-Home Care

Tab 46	**CS/SB 1430** by **BI, Burgess**; (Similar to CS/H 01023) Insolvent Insurers					
732288	PCS	S		RCS	AP, AEG	03/01 03:56 PM

Tab 47	**CS/SB 1436** by **CF, Garcia**; (Compare to CS/H 00615) Human Trafficking

Tab 48	**CS/SB 1452** by **CF, Book (CO-INTRODUCERS) Jones**; (Compare to CS/CS/H 00963) Funding for Sheriffs Providing Child Protective Investigative Services

Tab 49	**CS/SB 1474** by **CM, Bradley**; (Similar to CS/CS/H 01233) Online Training for Private Security Officers

422484	PCS	S	RCS	AP, AEG		03/02 10:12 AM

Tab 50	**SB 1518** by **Berman (CO-INTRODUCERS) Cruz, Stewart**; (Identical to H 01223) Lactation Space

Tab 51	**CS/SB 1556** by **EN, Gruters**; (Similar to CS/CS/CS/H 00967) Golf Course Best Management Practices Certification

773696	PCS	S	RCS	AP, AEG		03/01 04:22 PM

Tab 52	**SB 1582** by **Harrell**; (Similar to CS/CS/H 00915) Commercial Motor Vehicle Registration

Tab 53	**CS/SB 1600** by **CF, Bradley**; (Compare to CS/H 01249) Treatment of Defendants Adjudicated Incompetent to Stand Trial

534076	PCS	S	RCS	AP, AHS		03/01 04:27 PM

Tab 54	**SB 1682** by **Pizzo (CO-INTRODUCERS) Book, Simpson, Albritton, Ausley, Baxley, Bean, Berman, Boyd, Bracy, Bradley, Brandes, Brodeur, Broxson, Burgess, Cruz, Diaz, Farmer, Gainer, Garcia, Gibson, Gruters, Harrell, Hooper, Hutson, Jones, Mayfield, Passidomo, Perry, Polsky, Powell, Rodrigues, Rodriguez, Rouson, Stargel, Stewart, Taddeo, Torres, Wright**; (Similar to 1ST ENG/H 01469) Transportation Facility Designations/98 Points of Light Road

Tab 55	**SB 1708** by **Garcia (CO-INTRODUCERS) Jones, Book**; (Similar to CS/CS/H 01577) Child Welfare

Tab 56	**CS/SB 1798** by **CJ, Book**; (Similar to CS/CS/H 01453) Sexually Explicit Material

729720	A	S	RCS	AP, Pizzo	Delete L.67 - 713:	03/01 09:45 PM

Tab 57	**CS/SB 1800** by **CM, Boyd (CO-INTRODUCERS) Bradley**; (Compare to CS/H 01543) Broadband Infrastructure

711618	PCS	S	RCS	AP, ATD		03/01 09:50 PM

Tab 58	**CS/SB 1802** by **CM, Boyd**; (Similar to CS/H 01545) Broadband Pole Replacement Trust Fund

224394	PCS	S	RCS	AP, ATD		03/01 09:53 PM

Tab 59	**CS/SB 1952** by **GO, Albritton**; (Similar to CS/CS/H 01057) Evidence of Vendor Financial Stability

705416	PCS	S	RCS	AP, AEG		03/01 09:22 AM

Tab 60	**SB 7012** by **EN**; (Identical to H 01151) Per- and Polyfluoroalkyl Substances Task Force

972752	PCS	S	RCS	AP, AEG		03/01 09:29 AM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

APPROPRIATIONS
Senator Stargel, Chair
Senator Bean, Vice Chair

MEETING DATE: Monday, February 28, 2022
TIME: 10:30 a.m.—6:00 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/CS/HJR 1** State Affairs Committee / Ways and Means Committee / Tomkow (Similar CS/SJR 1746, Compare CS/S 1748, Linked CS/CS/H 1563)	Additional Homestead Property Tax Exemption for Specified Critical Public Service Workforce; Proposes amendment to State Constitution to authorize Legislature, for all levies other than school district levies, to grant additional homestead property tax exemption on $50,000 of assessed value of homestead property owned by classroom teachers, law enforcement officers, correctional officers, firefighters, emergency medical technicians, paramedics, child welfare services professionals, active duty members of United States Armed Forces, & Florida National Guard members. AP 02/28/2022 Favorable	Favorable Yeas 16 Nays 4
2	**CS/HB 3** Appropriations Committee / Leek / Brannan (Compare H 5001, S 2500)	Law Enforcement Officer, Benefits, Recruitment, and Training; Revises salary minimums for county sheriffs; provides for adoption benefits for law enforcements officers; creates Florida Law Enforcement Recruitment Bonus Payment Program; provides exemption from certain law enforcement officer training requirements for military veterans; provides requirements for skills training for law enforcement officers relating to officer health & safety; makes children of law enforcement officers eligible for Family Empowerment Scholarships; encourages school districts to establish public safety telecommunication training programs & offer law enforcement explorer programs; requires Board of Governors & State Board of Education to create process that enables eligible law enforcement officers or former officers to earn credit for college-level training & education acquired while serving an officer; creates Florida Law Enforcement Academy Scholarship Program; provides for reimbursement for out-of-state & special operations forces law enforcement equivalency training. AP 02/28/2022 Favorable	Favorable Yeas 18 Nays 0

A proposed committee substitute for the following bill (SB 196) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SB 196** Rodriguez (Similar CS/H 137)	Florida Housing Finance Corporation; Designating the corporation, rather than the State Board of Administration, as the state fiscal agency to make determinations in connection with specified bonds; authorizing the corporation's board of directors, rather than the State Board of Administration, to delegate to its executive director the authority and power to perform that function; requiring the executive director to annually report specified information to the board of directors, rather than the State Board of Administration, etc. CA 11/03/2021 Favorable ATD 02/02/2022 Fav/CS AP 02/28/2022 Fav/CS	Fav/CS Yeas 18 Nays 0

With subcommittee recommendation – Transportation, Tourism, and Economic Development

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A proposed committee substitute for the following bill (SB 268) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 268** Diaz (Similar CS/H 395)	Proclamation of "Victims of Communism Day"; Requiring the Governor to annually proclaim November 7 as "Victims of Communism Day"; requiring the day to be observed in public schools and by public exercise; requiring a day other than November 7 to be observed by public schools under a specified circumstance; requiring certain high school students to receive specified instruction on Victims of Communism Day, etc. ED 11/02/2021 Favorable AED 02/16/2022 Fav/CS AP 02/28/2022 Fav/CS	Fav/CS Yeas 19 Nays 0

With subcommittee recommendation - Education

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	**CS/SB 466** Health Policy / Torres (Compare CS/H 131)	Military Medics and Corpsmen of Florida Program; Authorizing the Department of Health to establish the Military Medics and Corpsmen of Florida (MMACOF) program in collaboration with Florida Is For Veterans, Inc.; requiring Florida Is For Veterans, Inc., to recruit and review the eligibility of certain veterans for the program; requiring Florida Is For Veterans, Inc., to recruit, establish, and maintain a statewide list of participating health care providers; requiring Florida Is For Veterans, Inc., to assist such veterans with identifying and applying to a participating health care providers for employment, etc. HP 01/13/2022 Fav/CS MS 02/08/2022 Favorable AP 02/28/2022 Fav/CS	Fav/CS Yeas 20 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	**SB 536** Diaz (Compare CS/CS/H 337)	Administrative Procedures; Applying certain provisions applicable to all rules other than emergency rules to repromulgated rules; requiring an agency to provide notice of a regulatory alternative to the Administrative Procedures Committee within a certain timeframe; requiring an agency to provide a copy of any proposal for a lower cost regulatory alternative to the committee within a certain timeframe; requiring agency review of rules and repromulgation of rules that do not require substantive changes within a specified timeframe; requiring an agency to identify and describe each rule it plans to develop, adopt, or repeal during the forthcoming year in the agency's annual regulatory plan, etc. JU 01/24/2022 Favorable AP 02/28/2022 Fav/1 Amendment RC	Fav/1 Amendment (734958) Yeas 18 Nays 0
7	**CS/SB 554** Military and Veterans Affairs, Space, and Domestic Security / Cruz (Identical CS/H 45)	Educational Opportunities for Disabled Veterans; Defining the term "disabled veteran"; providing that disabled veterans receiving certain federal educational assistance benefits are eligible to receive a waiver for the remaining cost of tuition and fees at certain institutions; requiring the amount awarded by the state to be contingent on the application of specified federal benefits; requiring certain institutions to submit an annual report to the Board of Governors and the State Board of Education, etc. MS 01/11/2022 Fav/CS AED 02/16/2022 Favorable AP 02/28/2022 Favorable With subcommittee recommendation - Education	Favorable Yeas 19 Nays 0
8	**CS/SB 988** Health Policy / Garcia (Compare CS/CS/H 987, S 1724)	Patient Visitation Rights; Citing this act as the "No Patient Left Alone Act"; requiring providers to allow clients to receive visitors during their admission or residency at the facility; requiring providers to develop certain alternative visitation protocols if providers have to restrict public access to their facilities for health or safety concerns; authorizing providers to require visitors to adhere to specified infection control protocols; authorizing providers to refuse visitation to a visitor who does not pass a health screening or refuses to comply with the provider's infection control protocols; requiring providers to submit their visitation policies to the Agency for Health Care Administration by a specified date for approval, etc. HP 01/13/2022 Fav/CS AHS 02/02/2022 Favorable AP 02/28/2022 Fav/CS	Fav/CS Yeas 18 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	With subcommittee recommendation – Health and Human Services		
9	**CS/SB 1010** Health Policy / Gibson (Similar CS/CS/CS/H 543)	Uterine Fibroid Research and Education; Requiring the Department of Health to develop and maintain an electronic database of information related to uterine fibroids; requiring health care providers to submit certain information to the department for inclusion in the database; prohibiting the database from including any personal identifying information; providing that such information is confidential; authorizing certain persons to use such information for a specified purpose; requiring the department to develop and include information related to fibroids in certain literature currently made available to the public for a specified purpose, etc. HP 02/02/2022 Fav/CS AHS 02/22/2022 Favorable AP 02/28/2022 Fav/CS	Fav/CS Yeas 17 Nays 0
	With subcommittee recommendation – Health and Human Services		
	A proposed committee substitute for the following bill (CS/SB 1040) is available:		
10	**CS/SB 1040** Children, Families, and Elder Affairs / Brodeur (Compare CS/H 733, H 735, Linked CS/S 1042)	Special Persons Registry; Citing this act as the "Protect Our Loved Ones Act"; requiring the Department of Health to develop and maintain a database, to be known as the "Special Persons Registry," for a specified purpose; specifying information the registry may include; requiring the Department of Law Enforcement to provide relevant information from the registry to law enforcement officers upon request through a specified system, etc. CF 02/08/2022 Fav/CS AHS 02/22/2022 Fav/CS AP 02/28/2022 Temporarily Postponed	Temporarily Postponed
	With subcommittee recommendation – Health and Human Services		
	A proposed committee substitute for the following bill (CS/SB 1042) is available:		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	**CS/SB 1042** Children, Families, and Elder Affairs / Brodeur (Similar H 735, Compare CS/H 733, Linked CS/S 1040)	Public Records/Special Persons Registry; Providing an exemption from public records requirements for all records, data, information, correspondence, and communications relating to the enrollment of persons in the Special Persons Registry maintained by the Department of Health; providing exceptions; authorizing law enforcement agencies, county emergency management agencies, and local fire departments to further disclose confidential and exempt information under certain circumstances; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CF 02/08/2022 Fav/CS AHS 02/22/2022 Fav/CS AP 02/28/2022 Temporarily Postponed	Temporarily Postponed
	With subcommittee recommendation – Health and Human Services		
12	**CS/CS/SB 1078** Ethics and Elections / Environment and Natural Resources / Hutson (Compare CS/H 783)	Soil and Water Conservation Districts; Providing for the subdivision of certain proposed soil and water conservation districts; requiring the supervisors of each soil and water conservation district to be elected from each of the district's subdivisions; providing qualification requirements for supervisors to serve on the governing body of a soil and water conservation district; requiring all supervisors of soil and water conservation district governing bodies to be elected at the 2022 general election, etc. EN 01/24/2022 Fav/CS EE 02/08/2022 Fav/CS AP 02/28/2022 Fav/CS	Fav/CS Yeas 11 Nays 8
	A proposed committee substitute for the following bill (CS/SB 1292) is available:		
13	**CS/SB 1292** Banking and Insurance / Gruters (Similar CS/CS/CS/H 749)	Fraud Prevention; Requiring that the electronic credentialing system display certain vehicle information for specified purposes by a specified date; requiring sellers to allow consumers to cancel in a specified manner and by specified means service contracts that have automatic renewal provisions; revising maximum fines for public adjusters and public adjuster apprentices for certain violations under a specified circumstance; authorizing the Department of Financial Services to impose an administrative fine on insurers under certain circumstances; revising felony violations for which prosecutions must be commenced within a specified timeframe, etc. BI 01/18/2022 Fav/CS AEG 02/02/2022 Fav/CS AP 02/28/2022 Fav/CS	Fav/CS Yeas 19 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	With subcommittee recommendation - Agriculture, Environment, and General Government		
14	**CS/SB 1302** Regulated Industries / Burgess (Compare CS/H 87, CS/CS/H 1259, H 1261, S 1118, S 1548)	Criminal History Information; Prohibiting an applicable board, or the Department of Business and Professional Regulation if there is no such board, from inquiring into or considering the conviction history of an applicant for licensure until it is determined that the applicant is otherwise qualified; prohibiting the applicable board, or the department if there is no board, from denying an application for licensure of a person based solely or in part on an applicant's criminal history; providing requirements for determining if such criminal history directly relates to the practice of the applicable profession; providing requirements for court-ordered sealing of certain records that were automatically sealed by the Department of Law Enforcement under specified provisions, etc. RI 01/18/2022 Fav/CS ACJ 02/01/2022 Favorable AP 02/28/2022 Fav/CS	Fav/CS Yeas 19 Nays 0
	With subcommittee recommendation – Criminal and Civil Justice		
15	**CS/SB 1382** Finance and Tax / Gruters (Similar CS/CS/H 1041)	Tax Administration; Prohibiting taxpayers from submitting certain records in tax proceedings under certain circumstances; authorizing the Department of Revenue to respond to contact initiated by taxpayers to discuss audits; clarifying conditions for application of an exemption for sales taxes for certain nonresident purchasers of boats or aircraft; requiring the department to notify the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation and dealers upon dealers' failure to comply with department requests for records; revising the period in which, and conditions under which, the executive director of the department may adopt emergency rules; revising audit procedures of the department, etc. CA 02/02/2022 Favorable FT 02/10/2022 Fav/CS AP 02/28/2022 Fav/CS	Fav/CS Yeas 16 Nays 2

A proposed committee substitute for the following bill (CS/SB 1426) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	**CS/SB 1426** Environment and Natural Resources / Burgess (Similar CS/CS/CS/H 965, Compare CS/H 349, CS/S 198)	Environmental Management; Providing for water quality enhancement areas, enhancement service areas, and enhancement credits; providing requirements for water quality enhancement area permits, enhancement service areas, and enhancement credits; directing the Department of Environmental Protection and water management districts to authorize the sale and use of enhancement credits to offset certain adverse water quality impacts and to meet certain water quality requirements; authorizing the department to enter into agreements and contracts with public and private entities for donations, funds, and payments to expedite the evaluation of environmental resource and dredge and fill permits, etc. EN 01/31/2022 Fav/CS AEG 02/16/2022 Fav/CS AP 02/28/2022 Fav/CS With subcommittee recommendation - Agriculture, Environment, and General Government	Fav/CS Yeas 20 Nays 0
17	**SB 1476** Wright (Similar H 357, Compare S 742)	Prescription Drug Coverage; Authorizing the Office of Insurance Regulation to examine pharmacy benefit managers; providing a penalty for failure to register as a pharmacy benefit manager under certain circumstances; revising the entities conducting pharmacy audits to which certain requirements and restrictions apply; providing that health insurers and health maintenance organizations that transfer a certain payment obligation to pharmacy benefit managers remain responsible for specified violations, etc. BI 02/02/2022 Favorable AEG 02/16/2022 Favorable AP 02/28/2022 Favorable With subcommittee recommendation - Agriculture, Environment, and General Government	Favorable Yeas 20 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
18	**CS/CS/HB 1557, 1st Eng.** Judiciary Committee / Education and Employment Committee / Harding (Similar S 1834)	Parental Rights in Education; Requires district school boards to adopt procedures that comport with certain provisions of law for notifying student's parent of specified information; requires such procedures to reinforce fundamental right of parents to make decisions regarding upbringing & control of their children; prohibits school district from adopting procedures or student support forms that prohibit school district personnel from notifying parent about specified information or that encourage student to withhold from parent such information; prohibits school district personnel from discouraging or prohibiting parental notification & involvement in critical decisions affecting student's mental, emotional, or physical well-being; prohibits classroom discussion about sexual orientation or gender identity in certain grade levels; requires school districts to notify parents of healthcare services; authorizes parent to bring action against school district to obtain declaratory judgment; provides for additional award of injunctive relief, damages, & reasonable attorney fees & court costs to certain parents. AP 02/28/2022 Favorable	Favorable Yeas 12 Nays 8
19	**CS/CS/HB 1563** State Affairs Committee / Ways and Means Committee / Tomkow (Similar CS/S 1748, Compare CS/SJR 1746, Linked CS/CS/HJR 1)	Homestead Property Tax Exemptions for Classroom Teachers, Law Enforcement Officers, Firefighters, Emergency Medical Technicians, Paramedics, Child Welfare Professionals, and Servicemembers; Specifies information that must be supplied annually to property appraiser by specified professionals who qualify for specified exemption; provides conditions under which those specified professionals may receive additional homestead property tax exemption; specifies amount of homestead property tax exemption; provides requirements for applying for & receiving exemption; specifies actions property appraiser may take if taxpayer improperly claims exemption; provides penalties under certain conditions; requires Legislature to appropriate moneys to offset reductions in ad valorem tax revenues experienced by fiscally constrained counties due; specifies procedures for distributing such moneys. AP 02/28/2022 Favorable	Favorable Yeas 19 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
20	**CS/SB 1610** Finance and Tax / Rodriguez (Compare CS/H 71, CS/H 7071, S 568)	Abatement of Ad Valorem Taxes and Non-ad Valorem Assessments for Residential Improvements Destroyed Due to a Sudden and Unforeseen Collapse; Providing for the eligibility for abatement of ad valorem taxes and non-ad valorem assessments for residential improvements destroyed following certain events; requiring property appraisers to provide specified statements to tax collectors; prohibiting property appraisers and tax collectors from issuing specified notices for parcels meeting certain requirements; requiring property appraisers to notify taxpayers of the abatement of taxes and non-ad valorem assessments under certain circumstances; requiring value adjustment boards to dismiss petitions under certain circumstances; providing for future repeal; providing for retroactive application, etc. CA 01/25/2022 Favorable FT 02/10/2022 Fav/CS AP 02/28/2022 Fav/CS	Fav/CS Yeas 19 Nays 0
21	**CS/SB 1670** Military and Veterans Affairs, Space, and Domestic Security / Hutson (Compare CS/H 7055, Linked CS/S 1694)	Cybersecurity; Requiring the Department of Management Services, acting through the Florida Digital Service, to provide annual cybersecurity training to certain persons; requiring state agency heads to annually provide cybersecurity awareness training to certain persons; requiring the Florida Digital Service to develop certain cybersecurity training curricula; requiring certain persons to complete certain training within a specified period and annually thereafter, etc. MS 02/08/2022 Fav/CS AP 02/28/2022 Fav/CS	Fav/CS Yeas 20 Nays 0
22	**CS/SB 1694** Military and Veterans Affairs, Space, and Domestic Security / Hutson (Compare CS/H 7057, Linked CS/S 1670)	Public Records and Public Meetings/Cybersecurity Incident or Ransomware Incident; Providing an exemption from public records requirements for certain information related to a cybersecurity incident or ransomware incident held by a political subdivision or state agency; providing an exemption from public meetings requirements for portions of a meeting that would reveal certain information related to a cybersecurity incident or ransomware incident held by a political subdivision or state agency; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. MS 02/08/2022 Fav/CS AP 02/28/2022 Fav/CS	Fav/CS Yeas 20 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
23	**CS/SB 1710** Children, Families, and Elder Affairs / Bradley (Similar CS/CS/CS/H 1349, Compare CS/CS/H 1351)	Guardianship; Requiring the Florida Clerks of Court Operations Corporation and clerks of court to establish a statewide database of guardianship information for certain purposes; requiring the database to be interoperable with certain data systems; requiring the Office of Public and Professional Guardians to share certain information; requiring the Office of Public and Professional Guardians to publish professional guardian registration profiles on its website, etc. CF 01/25/2022 Fav/CS AP 02/28/2022 Fav/1 Amendment RC	Fav/1 Amendment (208562) Yeas 20 Nays 0

A proposed committee substitute for the following bill (CS/SB 1728) is available:

24	**CS/SB 1728** Banking and Insurance / Boyd (Compare CS/CS/H 1307, CS/S 186)	Property Insurance; Deleting obsolete provisions related to eligibility thresholds for personal lines residential coverage with the Citizens Property Insurance Corporation; providing for a required limited annual rate increase for specified polices; providing that certain provisions relating to homeowners' policies do not prohibit insurers from providing limited coverage on personal lines residential property insurance policies by including roof surface type reimbursement schedules, etc. BI 02/02/2022 Fav/CS AEG 02/16/2022 Fav/CS AP 02/28/2022 Fav/CS	Fav/CS Yeas 17 Nays 2

With subcommittee recommendation - Agriculture, Environment, and General Government

25	**CS/SB 1796** Judiciary / Gruters (Similar CS/CS/H 1395)	Dissolution of Marriage; Requiring the court to make certain written findings in its awards of alimony; removing the court's ability to consider adultery of either spouse in determining the amount of an alimony award; revising factors that the court must consider in determining the proper type and amount of alimony; revising a provision authorizing the modification of rehabilitative alimony upon completion of the rehabilitative plan to include a certain condition; requiring the court to consider specified factors when determining an alimony award involving the existence of a supportive relationship between the obligee and another person, etc. JU 01/24/2022 Fav/CS AP 02/28/2022 Fav/1 Amendment RC	Fav/1 Amendment (144186) Yeas 11 Nays 8

A proposed committee substitute for the following bill (CS/SB 1874) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
26	**CS/SB 1874** Banking and Insurance / Boyd (Similar CS/CS/CS/H 959, Compare CS/CS/H 503, CS/CS/S 468)	Department of Financial Services; Providing an exception to service of process on public entities under certain circumstances; authorizing specified persons relating to the Division of Rehabilitation and Liquidation to purchase coverage in a state group health insurance plan at specified premium costs; requiring certain hospitals to demonstrate financial responsibility for maintaining professional liability coverage; transferring the Stop Inmate Fraud Program from the Department of Financial Services to the Department of Economic Opportunity; revising statewide schedules of maximum reimbursement allowances for medically necessary treatment, care, and attendance; revising requirements for licenses by endorsement to practice funeral directing, etc. BI 01/25/2022 Fav/CS AEG 02/22/2022 Fav/CS AP 02/28/2022 Fav/CS With subcommittee recommendation - Agriculture, Environment, and General Government	Fav/CS Yeas 19 Nays 0
27	**CS/SB 1940** Environment and Natural Resources / Brodeur (Similar CS/H 7053, Compare H 1019, CS/S 1238)	Statewide Flooding and Sea Level Rise Resilience; Establishing the Statewide Office of Resilience within the Executive Office of the Governor; providing for the appointment of a Chief Resilience Officer; requiring the Department of Transportation to develop a resilience action plan for the State Highway System; revising the projects the Department of Environmental Protection may fund within the Resilient Florida Grant Program; extending the dates by which the department must complete a comprehensive statewide flood vulnerability and sea-level rise data set and assessment; requiring the Florida Flood Hub for Applied Research and Innovation to provide tidal and storm surge flooding data to counties and municipalities for vulnerability assessments, etc. EN 01/31/2022 Fav/CS AEG 02/22/2022 Favorable AP 02/28/2022 Favorable With subcommittee recommendation - Agriculture, Environment, and General Government	Favorable Yeas 18 Nays 0

A proposed committee substitute for the following bill (CS/SB 1950) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
28	**CS/SB 1950** Health Policy / Brodeur (Compare H 607, CS/H 7047, CS/S 1080)	Statewide Medicaid Managed Care Program; Requiring, rather than authorizing, that the reimbursement method for provider service networks be on a prepaid basis; deleting a requirement that the Agency for Health Care Administration provide the opportunity for public feedback on a certain waiver application; revising requirements relating to the databook published by the agency consisting of Medicaid utilization and spending data; revising provisions relating to agency-defined quality measures under the achieved savings rebate program for Medicaid prepaid plans; providing that cancer hospitals meeting certain criteria are statewide essential providers, etc. HP 01/26/2022 Fav/CS AHS 02/16/2022 Fav/CS AP 02/28/2022 Fav/CS	Fav/CS Yeas 20 Nays 0
	With subcommittee recommendation – Health and Human Services		
29	**HB 5011** Appropriations Committee / Trumbull (Compare H 5001, S 2500)	Budgeting for Inflation that Drives Elevated Needs Fund; Creates Budgeting for Inflation that Drives Elevated Needs Fund within EOG; provides purpose of fund; provides for deposit & use of funds; provides for future review & termination of fund; directs CFO to transfer specified sum to fund. AP 02/28/2022 Fav/1 Amendment	Fav/1 Amendment (147946) Yeas 13 Nays 5
30	**HB 5015** Appropriations Committee / Perez (Compare H 5001, S 2500)	Evaluation of Significant State Risks; Creates Legislative Office of Risk Assessment; provides office shall be headed by chief risk officer; requires office to develop & update State Risk Register; provides specifications for State Risk Register; requires office to biennially submit register & certain list to LBC; requires office to submit annual progress report to Legislature; establishes Risk Estimating Conference; requires conference to estimate economic damage associated with risks identified in register. AP 02/28/2022 Fav/1 Amendment	Fav/1 Amendment (392560) Yeas 18 Nays 1

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
31	**HB 5301** State Administration and Technology Appropriations Subcommittee / Stevenson (Compare H 5001, S 2500)	Capitol Center; Provides certain facilities projects within Capitol Complex must be developed in consultation with, & may not be implemented, changed, or amended unless approved by certain persons; prohibits construction & placement of monument on premises of Capitol Complex unless design & placement of such monument is approved by certain persons after considering recommendations of certain entities; requires DMS to consult with Governor, President of Senate, & Speaker of House of Representatives before closing & reopening buildings within Capitol Center during declared state of emergency; requires DMS to provide annual maintenance & upkeep report; provides specifications for report. AP 02/28/2022 Fav/1 Amendment	Fav/1 Amendment (521994) Yeas 20 Nays 0
32	**SB 7046** Governmental Oversight and Accountability (Similar H 5007, Compare S 7038)	Public Employment; Requiring the Department of Management Services to periodically contract for the completion of certain compensation surveys; requiring the department to submit a report to the Governor and the legislative presiding officers upon completion of the surveys; authorizing Special Risk Class members who are law enforcement officers and meet certain criteria to participate in the deferred retirement option program for an additional time period; revising required employer retirement contribution rates for each membership class and subclass of the Florida Retirement System; revising allocations to investment plan member accounts, etc. AP 02/28/2022 Favorable	Favorable Yeas 19 Nays 0
	CONSENT AGENDA:		
	A proposed committee substitute for the following bill (CS/SB 160) is available:		
33	**CS/SB 160** Transportation / Harrell (Compare H 37, H 61, CS/H 89, CS/H 147, CS/H 315, H 331, H 661, S 180, S 650, S 1008, S 1092, S 1544)	Transportation-related Facility Designations; Providing honorary designations of certain transportation facilities in specified counties; directing the Department of Transportation to erect suitable markers, etc. TR 01/25/2022 Fav/CS ATD 02/16/2022 Fav/CS AP 02/28/2022 Fav/CS With subcommittee recommendation – Transportation, Tourism, and Economic Development	Fav/CS Yeas 19 Nays 0
	A proposed committee substitute for the following bill (CS/SB 358) is available:		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
34	**CS/SB 358** Health Policy / Rodriguez (Similar CS/H 1521, Compare H 1523, Linked CS/CS/S 590)	Professional Counselors Licensure Compact; Creating the Professional Counselors Licensure Compact; providing for recognition of the privilege to practice licensed professional counseling in member states; providing for the recognition of the practice of professional counseling through telehealth in member states; providing for the development of the data system, reporting procedures, and the exchange of specified information between member states; specifying that licensees practicing in a remote state under the compact must adhere to the laws and rules of the remote state; requiring the Department of Health to notify the Division of Law Revision upon enactment of the compact into law by 10 states, etc. HP 11/03/2021 Fav/CS AHS 02/22/2022 Fav/CS AP 02/28/2022 Fav/CS	Fav/CS Yeas 20 Nays 0
	With subcommittee recommendation – Health and Human Services		
35	**SB 390** Book (Identical H 235)	Restraint of Students with Disabilities in Public Schools; Prohibiting school personnel from using mechanical restraint on students with disabilities; providing exceptions, etc. ED 02/01/2022 Favorable AED 02/16/2022 Favorable AP 02/28/2022 Favorable	Favorable Yeas 20 Nays 0
	With subcommittee recommendation - Education		
	A proposed committee substitute for the following bill (CS/SB 398) is available:		
36	**CS/SB 398** Transportation / Hooper (Compare CS/CS/H 157)	Transportation Projects; Revising the requirement for the annual commitment of State Transportation Trust Fund revenues for public transportation projects by the Department of Transportation; providing that the department's program for innovative transportation projects may include progressive design-build contracts; revising the department's authority relating to design-build contracts; revising procedures relating to certificates of qualification issued by the department to construction contractors seeking certification to bid on certain contracts, etc. TR 12/01/2021 Fav/CS ATD 02/02/2022 Fav/CS AP 02/28/2022 Fav/CS	Fav/CS Yeas 20 Nays 0
	With subcommittee recommendation – Transportation, Tourism, and Economic Development		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	A proposed committee substitute for the following bill (SB 552) is available:		
37	**SB 552** Boyd (Compare CS/H 397, S 310)	Clerks of the Circuit Court; Revising the distribution of filing fees in specified trial and appellate proceedings; revising the calculations for certain payment plans with clerks of court; revising the duties of the Clerks of Court Operations Corporation; revising the allocation to the fine and forfeiture fund of filing fees of certain claims filed in county courts; authorizing clerks of court to review the property records and motor vehicle title records of applicants for indigent status, etc. JU 11/30/2021 Favorable ACJ 02/01/2022 Fav/CS AP 02/28/2022 Fav/CS	Fav/CS Yeas 20 Nays 0
	With subcommittee recommendation – Criminal and Civil Justice		
38	**CS/CS/SB 578** Community Affairs / Banking and Insurance / Hooper (Similar CS/CS/H 837)	Hurricane Loss Mitigation Program; Revising the use of certain funds from the Florida Hurricane Catastrophe Fund to also include construction of certain facilities; revising the title of a certain annual report; deleting construction relating to Citizens Property Insurance Corporation coverage rates; delaying the future repeal of the Hurricane Loss Mitigation Program, etc. BI 01/12/2022 Fav/CS CA 02/02/2022 Fav/CS AP 02/28/2022 Fav/CS	Fav/CS Yeas 20 Nays 0
	A proposed committee substitute for the following bill (CS/SB 752) is available:		
39	**CS/SB 752** Criminal Justice / Gainer (Identical H 387)	Probationary or Supervision Services for Misdemeanor Offenders; Authorizing the Department of Corrections to supervise certain misdemeanor offenders; deleting a prohibition on private entities providing probationary or supervision services to certain misdemeanor offenders; authorizing a private or public entity to provide probation services and other specified programming to misdemeanor offenders; revising who may approve specified contracts, etc. CJ 01/11/2022 Temporarily Postponed CJ 01/25/2022 Fav/CS ACJ 02/16/2022 Fav/CS AP 02/28/2022 Fav/CS	Fav/CS Yeas 20 Nays 0
	With subcommittee recommendation – Criminal and Civil Justice		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
40	**CS/SB 768** Health Policy / Rodriguez (Similar CS/CS/H 693, Compare CS/CS/H 343, H 679, CS/S 566, S 1268)	Department of Health; Revising the purpose of the department's targeted outreach program for certain pregnant women; requiring the department to encourage high-risk pregnant women of unknown status to be tested for sexually transmissible diseases; removing the Children's Medical Services office from parties required to coordinate in the development of local emergency management plans for special needs shelters; deleting a requirement that certain nursing program graduates complete a specified preparatory course; defining the terms "doctoral degree from an American Psychological Association accredited program" and "doctoral degree in psychology", etc. HP 01/26/2022 Fav/CS AHS 02/16/2022 Favorable AP 02/28/2022 Fav/CS	Fav/CS Yeas 20 Nays 0

With subcommittee recommendation – Health and Human Services

A proposed committee substitute for the following bill (SB 802) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
41	**SB 802** Gruters (Similar CS/CS/CS/H 1421)	School Safety; Requiring the FortifyFL reporting tool to notify reporting parties that submitting false information may subject them to criminal penalties; requiring the Commissioner of Education to oversee and enforce compliance with requirements relating to school safety and security; requiring certain law enforcement officers to be physically present and directly involved in active assailant emergency drills; authorizing school safety officers to make arrests on property owned or leased by a charter school under a charter contract, etc. ED 01/11/2022 Favorable AED 01/26/2022 Temporarily Postponed AED 02/16/2022 Fav/CS AP 02/28/2022 Fav/CS	Fav/CS Yeas 20 Nays 0

With subcommittee recommendation - Education

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
42	**CS/SB 898** Community Affairs / Stewart (Compare CS/CS/CS/H 577)	Tenant Safety; Citing this act as "Miya's Law"; requiring landlords of nontransient or transient apartments to require employees to undergo background screenings as a condition of employment; authorizing landlords to disqualify persons from employment under certain circumstances relating to criminal offenses; revising what constitutes reasonable notice for repairs of dwelling units; requiring public lodging establishments licensed as nontransient or transient apartments to take certain actions relating to employee background screenings and keys for dwelling units, etc. CA 01/25/2022 Fav/CS AEG 02/22/2022 Favorable AP 02/28/2022 Favorable	Favorable Yeas 20 Nays 0
	With subcommittee recommendation - Agriculture, Environment, and General Government		
43	**CS/SB 1060** Education / Hutson (Similar CS/H 461)	Florida Bright Futures Scholarship Program Student Service Requirements; Providing that students may satisfy eligibility requirements for a Florida Academic Scholars, Florida Medallion Scholars, Florida Gold Seal Vocational Scholars, or a Florida Gold Seal CAPE Scholars award, respectively, by performing a specified number of hours of paid work; authorizing, instead of requiring, such students to identify a specified interest or develop a plan for their service requirements under the program, etc. ED 02/08/2022 Fav/CS AP 02/28/2022 Favorable RC	Favorable Yeas 20 Nays 0
44	**CS/SB 1210** Environment and Natural Resources / Albritton (Identical CS/H 909)	Pollution Control Standards and Liability; Providing that the Secretary of Environmental Protection has exclusive jurisdiction in setting standards or procedures for evaluating environmental conditions and assessing potential liability for the presence of contaminants on certain agricultural lands; prohibiting the secretary from delegating such authority to a local governmental entity, etc. EN 02/07/2022 Fav/CS AG 02/10/2022 Favorable AP 02/28/2022 Favorable	Favorable Yeas 19 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
45	**SB 1358** Rouson (Similar H 1011)	Task Force on the Monitoring of Children in Out-of-Home Care; Creating the task force adjunct to the Department of Law Enforcement; requiring the department to provide certain services; requiring the Florida Institute for Child Welfare to conduct certain focus groups and submit its findings to the task force by a specified date; requiring the Department of Children and Families to submit certain monthly reports to the task force through a specified date; requiring the task force to submit a report to the Governor and Legislature by a specified date; providing for future repeal, etc. CF 01/25/2022 Favorable ACJ 02/01/2022 Favorable AP 02/28/2022 Favorable	Favorable Yeas 19 Nays 0

With subcommittee recommendation – Criminal and Civil Justice

A proposed committee substitute for the following bill (CS/SB 1430) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
46	**CS/SB 1430** Banking and Insurance / Burgess (Similar CS/H 1023)	Insolvent Insurers; Revising a prohibition against certain insolvent insurers' former officers or directors serving as officers or directors of an insurer or having direct or indirect control over certain selection or appointment of officers or directors, to allow such activities unless the Office of Insurance Regulation enters a specified order; providing required factors to be used in the determination and fixing of rates for premiums paid to insolvent insurers for specified coverages; authorizing insurers remitting assessments to the Florida Insurance Guaranty Association, Incorporated, to elect not to recoup advances; revising a requirement for information regarding assessment percentages which must be specified by the Office of Insurance Regulation in orders levying assessments, etc. BI 01/18/2022 Fav/CS AEG 02/16/2022 Fav/CS AP 02/28/2022 Fav/CS	Fav/CS Yeas 19 Nays 0

With subcommittee recommendation - Agriculture, Environment, and General Government

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
47	**CS/SB 1436** Children, Families, and Elder Affairs / Garcia (Compare CS/H 615)	Human Trafficking; Providing the Statewide Council on Human Trafficking with an additional duty; requiring the direct support organization of the Statewide Council on Human Trafficking to develop certain training for firesafety inspectors; requiring foster parents and agency staff to complete preservice and inservice training related to human trafficking, etc. CF 02/01/2022 Fav/CS AHS 02/16/2022 Favorable AP 02/28/2022 Favorable	Favorable Yeas 18 Nays 0
	With subcommittee recommendation – Health and Human Services		
48	**CS/SB 1452** Children, Families, and Elder Affairs / Book (Compare CS/CS/H 963)	Funding for Sheriffs Providing Child Protective Investigative Services; Authorizing sheriffs who provide child protective investigative services to carry forward a certain percentage of unexpended state funds each fiscal year; requiring certain funds to be returned to the Department of Children and Families; prohibiting funds carried forward from being used in certain ways; requiring that certain expenditures be reported to the department; authorizing unexpended funds to be retained through contract or grant agreement renewals under certain circumstances, etc. CF 01/25/2022 Fav/CS AHS 02/22/2022 Favorable AP 02/28/2022 Favorable	Favorable Yeas 19 Nays 0
	With subcommittee recommendation – Health and Human Services		
	A proposed committee substitute for the following bill (CS/SB 1474) is available:		
49	**CS/SB 1474** Commerce and Tourism / Bradley (Similar CS/CS/H 1233)	Online Training for Private Security Officers; Providing that certain required training criteria for Class “G” and Class “D” licenses, respectively, may be conducted online; providing requirements for such online training; requiring the Department of Agriculture and Consumer Services to establish certain criteria and rules for the regulation of certain entities that provide online training; providing requirements for online training courses for a Class “D” license, etc. CM 01/31/2022 Fav/CS AEG 02/22/2022 Fav/CS AP 02/28/2022 Fav/CS	Fav/CS Yeas 19 Nays 0
	With subcommittee recommendation - Agriculture, Environment, and General Government		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
50	**SB 1518** Berman (Identical H 1223)	Lactation Space; Requiring at least one lactation space to be provided in each county courthouse; providing requirements for the lactation space; authorizing the use of state or private funds to provide lactation space in appellate courthouses, etc. GO 02/02/2022 Favorable ACJ 02/16/2022 Favorable AP 02/28/2022 Favorable	Favorable Yeas 19 Nays 0

With subcommittee recommendation – Criminal and Civil Justice

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A proposed committee substitute for the following bill (CS/SB 1556) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
51	**CS/SB 1556** Environment and Natural Resources / Gruters (Similar CS/CS/CS/H 967)	Golf Course Best Management Practices Certification; Directing the Department of Environmental Protection to work and cooperate with the turfgrass science program at the University of Florida Institute of Food and Agricultural Sciences to administer a certification for golf course best management practices and provide and approve certification training and testing programs; providing certification and recertification requirements; providing that such certification exempts persons from certain local testing and local ordinance regulations, etc. EN 01/24/2022 Fav/CS AEG 02/22/2022 Fav/CS AP 02/28/2022 Fav/CS	Fav/CS Yeas 19 Nays 0

With subcommittee recommendation - Agriculture, Environment, and General Government

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
52	**SB 1582** Harrell (Similar CS/CS/H 915)	Commercial Motor Vehicle Registration; Providing for future expiration of a provision relating to vehicles with apportioned registrations; providing, beginning on a specified date, license plate and cab card requirements for vehicles registered in accordance with the International Registration Plan; specifying the fee for an original or renewal cab card and the trust fund where the fee is deposited; providing for the replacement at no charge of damaged or worn license plates, etc. TR 01/18/2022 Favorable ATD 02/02/2022 Favorable AP 02/28/2022 Favorable	Favorable Yeas 18 Nays 0

With subcommittee recommendation – Transportation, Tourism, and Economic Development

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A proposed committee substitute for the following bill (CS/SB 1600) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
53	**CS/SB 1600** Children, Families, and Elder Affairs / Bradley (Compare CS/H 1249)	Treatment of Defendants Adjudicated Incompetent to Stand Trial; Providing that a forensic client who is being held in a jail awaiting admission to a Department of Children and Families facility and who is likely to regain competence to proceed may receive treatment at any facility designated by the department, etc. CF 02/01/2022 Fav/CS AHS 02/16/2022 Fav/CS AP 02/28/2022 Fav/CS With subcommittee recommendation – Health and Human Services	Fav/CS Yeas 19 Nays 0
54	**SB 1682** Pizzo (Identical H 1469)	Transportation Facility Designations/98 Points of Light Road; Providing an honorary designation of a certain transportation facility in a specified county; directing the Department of Transportation to erect suitable markers, etc. TR 01/25/2022 Favorable ATD 02/16/2022 Favorable AP 02/28/2022 Favorable With subcommittee recommendation – Transportation, Tourism, and Economic Development	Favorable Yeas 18 Nays 0
55	**SB 1708** Garcia (Similar CS/CS/H 1577, Compare H 7065)	Child Welfare; Requiring the Department of Health to waive fees for certified copies of birth certificates issued to certain unaccompanied homeless youth and young adults; revising requirements for required collaboration among the Board of Governors, the Florida College System, and the Department of Education in working with the Department of Children and Families to assist specified children and young adults; revising eligibility and requirements for a certain driver education, licensure, and insurance program to include certain unaccompanied homeless youth; specifying certification criteria for unaccompanied homeless youth; requiring district school boards to provide cards that contain specified information to certain unaccompanied homeless youth, etc. CF 02/01/2022 Favorable AP 02/28/2022 Favorable	Favorable Yeas 18 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
56	**CS/SB 1798** Criminal Justice / Book (Similar CS/CS/H 1453)	Sexually Explicit Material; Increasing the monetary damages that an aggrieved person may receive as a result of violations relating to sexual cyberharassment; prohibiting the willful and malicious promotion of certain images without consent; providing criminal penalties; prohibiting a person from obtaining certain images with the intent to promote such images; authorizing law enforcement officers to arrest certain persons without a warrant, etc. CJ 01/25/2022 Fav/CS CF 02/08/2022 Favorable AP 02/28/2022 Fav/CS	Fav/CS Yeas 19 Nays 0

A proposed committee substitute for the following bill (CS/SB 1800) is available:

57	**CS/SB 1800** Commerce and Tourism / Boyd (Compare CS/H 1543, CS/H 1545, Linked CS/S 1802)	Broadband Infrastructure; Revising the duties of the Florida Office of Broadband to include administering the Broadband Pole Replacement Program; establishing the Broadband Pole Replacement Program within the office; requiring the Secretary of Economic Opportunity to apply for certain federal funding for the program; requiring that the amount of state funds allocated to the program be reduced by the amount of certain federal funds provided to the program; requiring an audit of the Broadband Pole Replacement Trust Fund within a certain period of time, etc. CM 01/24/2022 Fav/CS ATD 02/22/2022 Fav/CS AP 02/28/2022 Fav/CS	Fav/CS Yeas 18 Nays 0

With subcommittee recommendation – Transportation, Tourism, and Economic Development

A proposed committee substitute for the following bill (CS/SB 1802) is available:

58	**CS/SB 1802** Commerce and Tourism / Boyd (Similar CS/H 1545, Compare CS/H 1543, Linked CS/CS/S 1800)	Broadband Pole Replacement Trust Fund; Creating the trust fund within the Department of Economic Opportunity; providing the purpose of the trust fund; providing that moneys credited to the trust fund shall consist of certain funds; requiring that funds in the trust fund be used in a manner consistent with federal law; providing that the balance in the trust fund at the end of a fiscal year remains in the trust fund and is available for carrying out the purposes of the trust fund; providing for future legislative review and termination or re-creation of the trust fund, etc. CM 01/24/2022 Fav/CS ATD 02/22/2022 Fav/CS AP 02/28/2022 Fav/CS	Fav/CS Yeas 18 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	With subcommittee recommendation – Transportation, Tourism, and Economic Development		
	A proposed committee substitute for the following bill (CS/SB 1952) is available:		
59	**CS/SB 1952** Governmental Oversight and Accountability / Albritton (Similar CS/CS/H 1057)	Evidence of Vendor Financial Stability; Authorizing an agency, in making a certain determination, to establish financial stability criteria and require a demonstration of financial stability; providing that an agency that requires a vendor to demonstrate financial stability during a competitive solicitation process must accept certain evidence, etc. GO 01/26/2022 Fav/CS AEG 02/16/2022 Fav/CS AP 02/28/2022 Fav/CS	Fav/CS Yeas 19 Nays 0
	With subcommittee recommendation - Agriculture, Environment, and General Government		
	A proposed committee substitute for the following bill (SB 7012) is available:		
60	**SB 7012** Environment and Natural Resources (Identical H 1151, Compare CS/H 1475, S 1418)	Per- and Polyfluoroalkyl Substances Task Force; Creating the task force within the Department of Environmental Protection; providing the membership, organization, and duties of the task force; requiring the department to provide staffing to assist the task force in the performance of its duties; requiring the task force to convene by a specified date; requiring the task force to submit an annual report to the Governor and the Legislature by a specified date, etc. AEG 02/02/2022 Fav/CS AP 02/28/2022 Fav/CS	Fav/CS Yeas 19 Nays 0
	With subcommittee recommendation - Agriculture, Environment, and General Government		
	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 Appropriations

BILL:	CS/CS/HJR 1
INTRODUCER:	State Affairs Committee; Ways & Means Committee; and Representative Tomkow and others
SUBJECT:	Homestead Property Tax Exemption
DATE:	February 28, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gross	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/HJR 1 proposes an amendment to the Florida Constitution to authorize the Legislature to provide, through general law, for all levies other than school district levies, an additional homestead exemption on the value greater than $100,000 and up to $150,000 for a classroom teacher, law enforcement officer, correctional officer, firefighter, emergency medical technician, paramedic, child welfare services professional, active duty member of the United States Armed Forces, or a member of the Florida National Guard. Property maintained as a homestead by the owner for a person legally or naturally dependent upon the owner is eligible for the exemption.

The Revenue Estimating Conference (REC) analyzed a prior version of the joint resolution and concluded that it does not have a fiscal impact absent legislative implementation. However, if the joint resolution is approved by the electors, and the implementing bill, CS/CS/HB 1563, becomes law, the bill will reduce local property tax revenue for all levies other than school district levies by $85.9 million beginning in Fiscal Year 2023-2024.

If adopted by the Legislature, the proposed amendment will be submitted to Florida's electors for approval or rejection at the next general election in November 2022.

If approved by at least 60 percent of the electors, the proposed amendment will take effect on January 1, 2023.

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or "property tax" is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.[1] The property appraiser annually determines the assessed or "just value"[2] of property within the taxing jurisdiction and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's "taxable value."[3] Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes[4] and limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.[5]

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;[6] however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include: agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes; land used for conservation purposes; historic properties when authorized by the county or municipality; and certain working waterfront property.[7]

Property Tax Exemptions for Homestead Property

Homestead Exemption

Every person having legal or equitable title to real estate and who maintains thereon his or her permanent residence or the permanent residence of a dependent (homestead property) is eligible for a homestead tax exemption of up to $25,000. The exemption applies to all ad valorem taxes levied, including levies by school districts.[8] An additional homestead exemption of up to $25,000 applies to the property's value between $50,000 and $75,000.[9] Unlike the first $25,000, the additional $25,000 exemption does not apply to ad valorem taxes levied by school districts.

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[1] Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

[2] Property must be valued at "just value" for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm's-length transaction. *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

[3] *See* s. 192.001(2) and (16), F.S.

[4] FLA. CONST. art. VII, s. 1(a).

[5] *See* FLA. CONST. art. VII, s. 4.

[6] Section 193.011(2), F.S.

[7] FLA. CONST. art. VII, s. 4.

[8] FLA. CONST. art VII, s. 6(a) and s. 196.031, F.S.

[9] Section 196.031(1)(b), F.S.

Additional Homestead Exemptions for Certain Persons

The Florida Constitution authorizes the Legislature to provide additional property tax exemptions for the following persons who maintain property as a homestead:

- Counties and municipalities may grant exemptions to persons aged 65 years or over whose household income does not exceed $20,000 (low-income seniors).[10]
- A veteran or first responder[11] with a total and permanent service-connected disability is entitled to a complete exemption for the property.[12]
- A veteran with a total service-connected disability that confines him or her to a wheelchair is entitled to a complete exemption for the property. Upon the veteran's death, the exemption carries over to the veteran's unremarried surviving spouse.[13]
- A veteran disabled to a degree of 10 percent or more by misfortune or during wartime service is entitled to an exemption for any property up to $5,000. Upon the death of the veteran, the exemption carries over to the veteran's unremarried surviving spouse.[14]
- The unremarried surviving spouse of a veteran or first responder who died while on active duty is entitled to a complete exemption for the property if the veteran was a permanent resident of Florida on the day he or she died.[15]

Tax Discount on Homestead Property for a Combat-disabled Veteran

In addition to the property tax exemptions described above, certain combat-disabled veterans are entitled to a discount on their homestead property taxes.[16] The discount is calculated as a percentage equal to the percentage of the veteran's permanent, service-connected disability.[17] The discount is applied as a reduction to the taxable value of the homestead property.[18]

III. Effect of Proposed Changes:

The joint resolution proposes an amendment to the Florida Constitution to authorize the Legislature to provide, through general law, for all levies other than school district levies, an additional homestead exemption on the value greater than $100,000 and up to $150,000. Persons eligible for the exemption include classroom teachers, law enforcement officers, correctional officers, firefighters, emergency medical technicians, paramedics, child welfare services professionals, active duty members of the United States Armed Forces, members of the Florida National Guard, or a person legally or naturally dependent upon the owner.

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[10] FLA. CONST. Art. VII, s. 6(d)(1) and (2). The income level is adjusted each year according to changes in the consumer price index. For 2022, persons will qualify if the household income does not surpass $32,561. Florida Department of Revenue, *Florida Property Tax Valuation and Income Limitation Rates,* available at: https://floridarevenue.com/property/Documents/AdditionalHomesteadExemptions.pdf (last visited Feb. 5, 2022).

[11] "First responder" in this context means a law enforcement officer or correctional officer as defined in s. 943.10, F.S., a firefighter as defined in s. 633.102, F.S., or an emergency medical technician or paramedic as defined in s. 401.23, F.S., who is a full-time paid employee, part-time paid employee, or unpaid volunteer. Section 196.081(6)(c)1., F.S.

[12] Sections 196.081 and 196.102, F.S.

[13] Section 196.091(1) and (3), F.S.

[14] Section 196.24, F.S.

[15] Section 196.081(4) and (6) F.S.

[16] Section 196.082, F.S.

[17] Section 196.082(2), F.S.

[18] Section 196.082(5), F.S.

If adopted by the Legislature, the proposed amendment will be submitted to Florida's electors for approval or rejection at the next general election in November 2022.

If approved by at least 60 percent of the electors, the proposed amendment will take effect January 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate provisions in Article VII, section 18 of the Florida Constitution, do not apply to joint resolutions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article XI, s. 1 of the Florida Constitution authorizes the Legislature to propose amendments to the Florida Constitution by joint resolution approved by a three-fifths vote of the membership of each house. Article XI, s. 5(a) of the Florida Constitution requires the amendment be placed before the electorate at the next general election[19] held more than 90 days after the proposal has been filed with the Secretary of State or at a special election held for that purpose. Constitutional amendments submitted to the electors must be printed in clear and unambiguous language on the ballot.[20]

Article XI, s. 5(d) of the Florida Constitution requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the 6th week immediately preceding the week the election is held.

Article XI, s. 5(e) of the Florida Constitution requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes

[19] Section 97.021(16), F.S., defines "general election" as an election held on the first Tuesday after the first Monday in November in the even-numbered years, for the purpose of filling national, state, county, and district offices and for voting on constitutional amendments not otherwise provided for by law.
[20] Section 101.161(1), F.S.

effective on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference (REC) analyzed a prior version of the joint resolution and concluded that it does not have a fiscal impact absent legislative implementation. However, if the joint resolution is approved by the electors, and the implementing bill, CS/CS/HB 1563, becomes law, the bill will reduce local property tax revenue for all levies other than school district levies by $85.9 million beginning in Fiscal Year 2023-2024.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Article XI, s. 5(d) of the Florida Constitution requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published in the 10th week and again in the 6th week immediately preceding the week the election is held.

The Division of Elections (division) within the Department of State pays for publication costs to advertise all constitutional amendments in both English and Spanish, [21] typically paid from non-recurring General Revenue funds.[22] Accurate cost estimates for the next constitutional amendment advertising cannot be determined until the total number of amendments to be advertised is known and updated quotes are obtained from newspapers.

There is an unknown additional cost for the printing and distributing of the constitutional amendments, in poster or booklet form, in English and Spanish, for each of the 67 Supervisors of Elections to post or make available at each polling room or each voting site, as required by s. 101.171, F.S. Historically, the division has printed and distributed booklets that include the ballot title, ballot summary, text of the constitutional amendment, and, if applicable, the financial impact statement. Beginning in 2020, the summary of such financial information statements was also included as part of the booklets.[23]

VI. Technical Deficiencies:

None.

[21] Pursuant to *Section 203 of the Voting Rights Act (52 U.S.C.A. § 10503)*.
[22] *See* Ch. 2020-111, Specific Appropriation 3132, Laws of Fla.
[23] Section 100.371(13)(e)4., F.S. *See also* Chapter 2019-64, s. 3, Laws of Fla.

VII. Related Issues:

None.

VIII. Statutes Affected:

This resolution substantially amends Article VII, section 4 of the Florida Constitution.

This resolution creates a new section in Article XII of the Florida Constitution.

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 Finance and Tax on February 10, 2022:
The CS limits the exemption to all levies other than school district levies and allows the exemption to apply to property maintained as a permanent residence for a person legally or naturally dependent upon the owner.

B. Amendments:

None.

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

House Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article VII and the creation of a new section in Article XII of the State Constitution to authorize the legislature, by general law, for all levies other than school district levies, to grant an additional homestead property tax exemption on $50,000 of the assessed value of homestead property owned by classroom teachers, law enforcement officers, correctional officers, firefighters, emergency medical technicians, paramedics, child welfare services professionals, active duty members of the United States Armed Forces, and Florida National Guard members.

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

That the following amendment to Section 6 of Article VII and the creation of a new section in Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

FLORIDA HOUSE OF REPRESENTATIVES

CS/CS/HJR 1 2022

SECTION 6. Homestead exemptions.—

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of twenty-five thousand dollars and, for all levies other than school district levies, on the assessed valuation greater than fifty thousand dollars and up to seventy-five thousand dollars, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemption shall not apply with respect to any assessment roll until such roll is first determined to be in compliance with the provisions of section 4 by a state agency designated by general law. This exemption is repealed on the effective date of any amendment to this Article which provides for the assessment of homestead property at less than just value.

(b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock

or membership in a corporation, the value of the proportion which the interest in the corporation bears to the assessed value of the property.

(c) By general law and subject to conditions specified therein, the Legislature may provide to renters, who are permanent residents, ad valorem tax relief on all ad valorem tax levies. Such ad valorem tax relief shall be in the form and amount established by general law.

(d) The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant either or both of the following additional homestead tax exemptions:

(1) An exemption not exceeding fifty thousand dollars to a person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, who has attained age sixty-five, and whose household income, as defined by general law, does not exceed twenty thousand dollars; or

(2) An exemption equal to the assessed value of the property to a person who has the legal or equitable title to real estate with a just value less than two hundred and fifty thousand dollars, as determined in the first tax year that the owner applies and is eligible for the exemption, and who has maintained thereon the permanent residence of the owner for not less than twenty-five years, who has attained age sixty-five, and whose household income does not exceed the income limitation

prescribed in paragraph (1).

The general law must allow counties and municipalities to grant these additional exemptions, within the limits prescribed in this subsection, by ordinance adopted in the manner prescribed by general law, and must provide for the periodic adjustment of the income limitation prescribed in this subsection for changes in the cost of living.

(e)(1) Each veteran who is age 65 or older who is partially or totally permanently disabled shall receive a discount from the amount of the ad valorem tax otherwise owed on homestead property the veteran owns and resides in if the disability was combat related and the veteran was honorably discharged upon separation from military service. The discount shall be in a percentage equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs. To qualify for the discount granted by this paragraph, an applicant must submit to the county property appraiser, by March 1, an official letter from the United States Department of Veterans Affairs stating the percentage of the veteran's service-connected disability and such evidence that reasonably identifies the disability as combat related and a copy of the veteran's honorable discharge. If the property appraiser denies the request for a discount, the appraiser must notify the applicant

in writing of the reasons for the denial, and the veteran may reapply. The Legislature may, by general law, waive the annual application requirement in subsequent years.

(2) If a veteran who receives the discount described in paragraph (1) predeceases his or her spouse, and if, upon the death of the veteran, the surviving spouse holds the legal or beneficial title to the homestead property and permanently resides thereon, the discount carries over to the surviving spouse until he or she remarries or sells or otherwise disposes of the homestead property. If the surviving spouse sells or otherwise disposes of the property, a discount not to exceed the dollar amount granted from the most recent ad valorem tax roll may be transferred to the surviving spouse's new homestead property, if used as his or her permanent residence and he or she has not remarried.

(3) This subsection is self-executing and does not require implementing legislation.

(f) By general law and subject to conditions and limitations specified therein, the Legislature may provide ad valorem tax relief equal to the total amount or a portion of the ad valorem tax otherwise owed on homestead property to:

(1) The surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces.

(2) The surviving spouse of a first responder who died in

the line of duty.

(3) A first responder who is totally and permanently disabled as a result of an injury or injuries sustained in the line of duty. Causal connection between a disability and service in the line of duty shall not be presumed but must be determined as provided by general law. For purposes of this paragraph, the term "disability" does not include a chronic condition or chronic disease, unless the injury sustained in the line of duty was the sole cause of the chronic condition or chronic disease.

As used in this subsection and as further defined by general law, the term "first responder" means a law enforcement officer, a correctional officer, a firefighter, an emergency medical technician, or a paramedic, and the term "in the line of duty" means arising out of and in the actual performance of duty required by employment as a first responder.

(g) By general law and subject to conditions and limitations specified therein, for all levies other than school district levies, the legislature may provide an additional homestead exemption on the assessed valuation of greater than one hundred thousand dollars and up to one hundred fifty thousand dollars to a classroom teacher, a law enforcement officer, a correctional officer, a firefighter, an emergency medical technician, a paramedic, a child welfare services professional, an active duty member of the United States Armed

Forces, or a member of the Florida National Guard who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner.

ARTICLE XII

SCHEDULE

Additional homestead property tax exemption for specified critical public services workforce.—This section and the amendment to Section 6 of Article VII, authorizing the legislature, for all levies other than school district levies, to grant an additional homestead property tax exemption on $50,000 of the assessed value of homestead property owned by classroom teachers, law enforcement officers, correctional officers, firefighters, emergency medical technicians, paramedics, child welfare services professionals, active duty members of the United States Armed Forces, and members of the Florida National Guard, shall take effect January 1, 2023.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTION 6

ARTICLE XII

ADDITIONAL HOMESTEAD PROPERTY TAX EXEMPTION FOR SPECIFIED CRITICAL PUBLIC SERVICES WORKFORCE.—Proposing an amendment to the State Constitution to authorize the Legislature, by general

FLORIDA HOUSE OF REPRESENTATIVES

CS/CS/HJR 1 2022

law, to grant an additional homestead tax exemption for nonschool levies of up to $50,000 of the assessed value of homestead property owned by classroom teachers, law enforcement officers, correctional officers, firefighters, emergency medical technicians, paramedics, child welfare services professionals, active duty members of the United States Armed Forces, and Florida National Guard members. This amendment shall take effect January 1, 2023.

The Florida Senate

APPEARANCE RECORD

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

2/28/2022
Meeting Date

Appropriations
Committee

1 HB 1
Bill Number or Topic

Amendment Barcode (if applicable)

Name Matt Dunagan

Phone 850-877-2165

Address 2617 Mahan Drive
Street

Email mdunagan@flsheriffs

Tallahassee FL 32312
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida 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

APPEARANCE RECORD

Deliver both copies of this form to
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February 28, 2022
Meeting Date

Appropriations
Committee

HB 1
Bill Number or Topic

Amendment Barcode (if applicable)

Name Matt Puckett

Phone

Address 300 East Brevard Street
Street

Email matt@flpba.org

Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida Police Benevolent 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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2/28/2022
Meeting Date

Appropriations
Committee

HB 1
Bill Number or Topic

Amendment Barcode (if applicable)

Name Danielle Scoggins

Phone (850) 224-1400

Address 200 S. Monroe St
Street

Email Danielles@floridarealtors.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 Realtors

☐ 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

2/28/2022
Meeting Date

S Appropriations
Committee

HJR 1
Bill Number or Topic

N/A
Amendment Barcode (if applicable)

Name Bob McKee

Phone 850-766-1952

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:

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 Appropriations

BILL:	CS/HB 3
INTRODUCER:	Appropriations Committee; and Representative Leek and others
SUBJECT:	Law Enforcement Officer, Benefits, Recruitment, and Training
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Grace/Hrdlicka	Sadberry	AP	**Favorable**

I. Summary:

CS/HB 3 provides law enforcement agencies with additional tools to bolster the recruitment and retention of qualified officers by providing financial incentives, enhanced training, expanded educational opportunities, and recognition that honors law enforcement officers' service to the state of Florida. The bill:

- Creates the Florida Law Enforcement Recruitment Bonus Program to provide one-time bonus payments of up to $5,000 to newly employed law enforcement officers in Florida;
- Creates the Florida Law Enforcement Academy Scholarship Program to cover tuition, fees, and up to $1,000 of eligible education expenses for trainees enrolled in a law enforcement officer basic recruit training program;
- Creates a reimbursement program to pay for up to $1,000 of equivalency training costs for certified law enforcement officers who relocate to Florida or members of the special operations forces who become full-time law enforcement officers;
- Provides law enforcement officers who adopt a child from within the state child welfare system with a $25,000 benefit for adopting a child with special needs or a $10,000 benefit for adopting a child without special needs;
- Makes dependent children of law enforcement officers eligible to receive a Family Empowerment Scholarship to attend a private school;
- Increases the base salary for each county sheriff by $5,000;
- Exempts veterans and applicants with an associate degree or higher from taking the basic skills test as a prerequisite to entering a law enforcement officer basic recruit training program;
- Requires that law enforcement officers receive training in health and wellness principles as part of their initial certification training and continued employment training;
- Allows law enforcement officers or former law enforcement officers to receive postsecondary credit at Florida public postsecondary educational institutions for training and experience acquired while serving;
- Encourages each district school board to establish public safety telecommunication training programs and law enforcement explorer programs in public schools; and

- Designates May 1 of each year as "Law Enforcement Appreciation Day."

The fiscal impact of the bill is indeterminate. See Section V. Fiscal Impact Statement.

The bill takes effect on July 1, 2022.

II. Present Situation:

Law enforcement agencies across the United States have reported difficulty in attracting and retaining qualified law enforcement officers. According to a 2019 survey conducted by the International Association of Chiefs of Police, 78 percent of law enforcement agencies experienced difficulty in recruiting qualified candidates, 50 percent of agencies reported having to change employment policies in order to expand the pool of eligible recruits, and 25 percent reported having to reduce or eliminate certain law enforcement services or units due to staffing difficulties. [1]

The emergence of COVID-19 in early 2020 exacerbated the difficulty in recruiting law enforcement officers. In a survey conducted in September 2020, the number of law enforcement agencies reporting difficulty in recruiting qualified officers increased to 86 percent.[2] Law enforcement agencies have reported a variety of reasons for the difficulty in maintaining full staffing levels, including the negative public perception of law enforcement officers, an increase in retirements, decreased interest in law enforcement careers, the economy and availability of open positions in other occupations, and the lengthy background check and hiring process. Although law enforcement agencies have attempted to address the problem in a variety of ways, such as by offering hiring incentives, relaxing automatic candidate disqualifiers, providing more flexible work schedules, increasing fringe benefits, and expanding recruitment campaigns, many agencies are still unable to recruit enough qualified officers. [3]

The remaining present situation for the relevant portions of the bill is discussed under the Effect of Proposed Changes of this bill analysis.

III. Effect of Proposed Changes:

This bill provides law enforcement agencies with additional tools to bolster the recruitment and retention of qualified officers by providing financial incentives, enhanced training, expanded educational opportunities, and recognition that honors law enforcement officers' service to the state of Florida.

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[1] International Association of Chiefs of Police, *The State of Recruitment: A Crisis for Law Enforcement*, p. 3, https://www.theiacp.org/sites/default/files/239416_IACP_RecruitmentBR_HR_0.pdf (last visited Feb. 24, 2022).
[2] Eric Glasser, *Study finds 86% of police departments experiencing staffing shortages*, WTSP (Sept. 16, 2020), https://www.wtsp.com/article/news/local/study-finds-86-of-police-departments-experiencing-shortages/67-cd4f8f7c-1d5e-4840-b0b4-53614530249e (last visited Feb. 24, 2022).
[3] *See generally* International Association of Chiefs of Police, *The State of Recruitment: A Crisis for Law Enforcement*.

Florida Law Enforcement Recruitment Bonus Payment Program (Section 3)

Present Situation

In an effort to reduce staffing shortages, many law enforcement agencies offer financial incentives to recruit new law enforcement officers.[4] For example, the Orange County Sheriff's Office is offering a $2,500 signing bonus for candidates with two or more years of full-time law enforcement experience and $1,500 for all other candidates.[5] In an attempt to attract new officers, the City of Ft. Myers is offering relocation assistance of up to $5,000 for out-of-state candidates and up to $3,000 for in-state candidates, as well as a $1,000 signing bonus for newly hired officers.[6]

Effect of Proposed Changes

The bill creates s. 445.08, F.S., to establish the Law Enforcement Recruitment Bonus Payment Program (Bonus Program) within the Department of Economic Opportunity (DEO). The bill creates the Bonus Program to administer one-time bonus payments of up to $5,000 to newly employed officers in Florida, subject to legislative appropriation.[7] The bill defines a "newly employed officer" as a person who gains or is appointed to full-time employment as a certified law enforcement officer[8] with a Florida criminal justice employing agency[9] on or after July 1, 2022, and who has never before been employed as a law enforcement officer in this state.

The bill requires bonus payments to be prorated based on the funds appropriated for the Bonus Program. The bill requires the DEO to develop an annual plan for administering the Bonus Program and distributing bonus payments to eligible officers. At a minimum, the DEO's annual plan must include:

- The method for determining the estimated number of newly employed officers to gain or be appointed to full-time employment during the applicable fiscal year.
- The minimum eligibility requirements a newly employed officer must meet to receive and retain a bonus payment, which must include:
  - Obtaining certification as a law enforcement officer.

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[4] International Association of Chiefs of Police, *The State of Recruitment: A Crisis for Law Enforcement*, p. 6.
[5] Florida Sheriffs Association, *Deputy Sheriff – Patrol (FL Certified Law Enforcement Officer)*, https://flsheriffsjobs.org/jobs/view/deputy-sheriff-patrol-fl-certified-law-enforcement-officer/49899741/?keywords=&pos_flt=0&location=Orange+county+fl&location_completion=&location_type=&location_text=&location_autocomplete=0 (last visited Feb. 24, 2022).
[6] Florida Police Chiefs Association, *Certified (FL) Police Officer*, https://fpca.com/certified-fl-police-officer-fort-myers-police/ (last visited Feb. 24, 2022).
[7] The bonus payment must be adjusted to include an amount to include any FICA due.
[8] "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. Section 943.10(1), F.S.
[9] "Employing agency" means any agency or unit of government or any municipality or the state or any political subdivision thereof, or any agent thereof, which has constitutional or statutory authority to employ or appoint persons as officers. The term also includes any private entity which has contracted with the state or county for the operation and maintenance of a nonjuvenile detention facility. Section 943.10(4), F.S.

    - Gaining full-time employment with a Florida criminal justice agency.
    - Maintaining continuous full-time employment with one or more Florida criminal justice agencies for at least 2 years from the date on which the officer obtained certification, provided that an officer employed by more than one criminal justice agency may not have a break in service longer than 15 days when transitioning between employers.
- The method that will be used to determine the bonus payment amount to be distributed to each newly employed officer.
- The method that will be used to distribute bonus payments to employing law enforcement agencies for distribution to eligible officers.
- The estimated cost to the DEO associated with developing and administering the program and distributing bonus payment funds.
- The method by which an officer must reimburse the state if he or she received a bonus payment but failed to maintain continuous employment for the required 2-year period. An officer is not required to reimburse the state if he or she is discharged from employment with a law enforcement agency for a reason other than misconduct.

The bill requires the DEO to submit the annual plan to the Executive Office of the Governor's Office of Policy and Budget, the chair of the Senate Appropriations Committee, and the chair of the House of Representatives Appropriations Committee by October 1 of each year. Agencies employing eligible individuals and the Criminal Justice Standards and Training Commission (CJSTC) must assist the DEO with collecting any required information and distributing payments. The bill authorizes the DEO to submit budget amendments as necessary to release funds appropriated for the Bonus Program to criminal justice employing agencies.

The Bonus Program expires on July 1, 2025.

Florida Law Enforcement Academy Scholarship Program (Section 11)

Present Situation

Prior to being certified as a law enforcement officer in Florida, a person must complete a basic recruit training program unless he or she can claim an exemption.[10] A trainee may either pay the costs of tuition out-of-pocket, or, pursuant to s. 943.16, F.S., an employing agency may sponsor a trainee to pay the costs of his or her tuition.[11] A trainee who is sponsored by an employing agency is required to maintain employment with that agency for at least 2 years after graduation from the basic recruit training program. In most cases, if a trainee fails to maintain employment for the 2-year period, he or she is required to reimburse the employing agency for the full cost of tuition and other course expenses.[12]

Effect of Proposed Changes

The bill creates s. 1009.896, F.S., which, beginning with the 2022-2023 academic year, creates the Florida Law Enforcement Academy Scholarship Program (Scholarship Program) to assist in

[10] Section 943.13(9), F.S. *See* heading Equivalency Training Reimbursement, *infra.*
[11] Section 943.16(1), F.S.
[12] Section 943.16(2), F.S. A trainee is not required to reimburse the employing agency if he or she terminates employment with the employing agency and resigns his or her law enforcement certification or if the trainee terminates employment due to hardship or extenuating circumstances. Section 943.16(6) and (7), F.S.

the recruitment of law enforcement officers by providing a scholarship to trainees that enroll in approved law enforcement officer basic recruitment training programs. The Scholarship Program is administered by the Department of Education (DOE), in consultation with the Florida Department of Law Enforcement (FDLE), according to the rules and procedures established by the State Board of Education (SBE). The bill requires scholarships to be awarded on a first-come, first-served basis based on the date the DOE receives each completed application. Scholarships are contingent upon an appropriation by the Legislature. To be eligible for a scholarship, a trainee must:

- Be enrolled at a basic recruit training program approved by the CJSTC at a Florida College System (FCS) institution or school district technical center.
- Not be sponsored by an employing agency that is already covering the costs of training.

The bill provides for a scholarship award in an amount equal to the costs and specified fees which are necessary to complete the basic recruit training program, less any state financial aid received by a trainee. A nonresident may apply for a scholarship, but the bill prohibits such an award from including the additional out-of-state student fee. In addition to tuition and fees, a trainee is also eligible for up to $1,000 for educational expenses, including the officer certification examination fee,[13] textbooks, uniforms, ammunition, required insurance, and any other costs or fees for consumable materials required to complete the basic recruit training program.

Law Enforcement Equivalency Training Reimbursement (Section 12)

Present Situation

A person may be exempt from completing all or part of a law enforcement officer basic recruit training program if he or she:

- Has completed a comparable basic recruit training program in another state or with the federal government and served as a full-time sworn officer in another state for at least 1 year, provided there is no more than an 8-year break in employment;
- Served in the special operations forces[14] for a minimum of 5 years, provided there is no more than a 4-year break from special operations service; or
- Was previously certified as a law enforcement officer in Florida but is on inactive status with more than a 4-year break in service, but no more than an 8-year break in service.[15]

To claim an exemption, a person must document the reason he or she is requesting an exemption on an FDLE-issued form and submit the form to his or her employing agency, training center, or

[13] The fee is $100. *See* Florida Department of Law Enforcement, *State Officer Certification Exam*, https://www.fdle.state.fl.us/CJSTC/Exam/Exam-Home.aspx#:~:text=The%20SOCE%20is%20administered%20on,taking%20the%20SOCE%20is%20%24100 (last visited Feb. 24, 2022).

[14] "Special operations forces" means those active and reserve component forces of the military services designated by the Secretary of Defense and specifically organized, trained, and equipped to conduct and support special operations. The term includes, but is not limited to, servicemembers of the U.S. Army Special Forces and the U.S. Army 75th Ranger Regiment; the U.S. Navy SEALs and Special Warfare Combatant-Craft Crewmen; the U.S. Air Force Combat Control, Pararescue, and Tactical Air Control Party specialists; the U.S. Marine Corps Critical Skills Operators; and any other component of the U.S. Special Operations Command approved by the CJSTC. Section 943.10(22), F.S.

[15] Sections 943.13(9) and 943.131(2)(a), F.S.

criminal justice selection center for initial verification. The form is then forwarded to the CJSTC for final approval. If a person receives an exemption from basic recruit training, he or she has 1 year to complete any additional training, if required; to demonstrate proficiency in high-liability training areas; and to pass the officer certification examination.[16]

Effect of Proposed Changes

The bill creates s. 1009.8961, F.S., which, beginning with the 2022-2023 academic year, requires the DOE, in consultation with the FDLE, to reimburse the costs of equivalency training for certified law enforcement officers from other states who relocate to Florida and for members of the special operations forces who are transitioning into service as full-time law enforcement officers. To be eligible for such reimbursement, an applicant's employing agency must certify that he or she:

- Qualifies for an exemption from the basic recruit training program.
- Is not sponsored by the employing agency already to cover the costs of training.

The bill provides that applicants may be reimbursed up to $1,000 for eligible expenses, contingent upon appropriation. Reimbursement is awarded on a first-come, first-served basis for costs or fees incurred by an applicant for:

- Equivalency assessment tests.
- Equivalency training.
- The law enforcement officer certification examination.

College Credit for Law Enforcement Training (Section 10)

Present Situation

Section 1004.096, F.S., requires the Board of Governors (BOG) to adopt regulations and the SBE to adopt rules to create a process to allow eligible servicemembers or veterans of the U.S. Armed Forces to earn postsecondary credit across all Florida public postsecondary educational institutions for college-level training and education acquired in the military. These regulations and rules include procedures for credential evaluation and the uniform award of postsecondary credit or career education clock hours, including, but not limited to, equivalency and alignment of military coursework with appropriate postsecondary courses and course descriptions. State universities, FCS institutions, and career centers are required to award postsecondary credit or career education clock hours for courses taken and occupations held by individuals during their service in the military based on the rules and regulations adopted by the BOG and the SBE.[17]

Effect of Proposed Changes

The bill creates s. 1004.098, F.S., which requires the BOG and the SBE to adopt rules to create a process to allow eligible law enforcement officers or former law enforcement officers to earn postsecondary credit across all Florida public postsecondary educational institutions for college-level training and education acquired while serving as a law enforcement officer. Such regulations and rules must include procedures for credential evaluation and the uniform award of

[16] Section 943.131, F.S.
[17] Section 1004.096, F.S.

postsecondary credit or career education clock hours, including, but not limited to, equivalency and alignment of law enforcement training with appropriate postsecondary courses and course descriptions.

The bill requires the Articulation Coordinating Committee[18] (ACC) to convene a workgroup by September 1, 2022, to develop a process for determining postsecondary course equivalencies and the minimum postsecondary credit or career education clock hours that must be awarded for law enforcement training and experience. The workgroup is composed of the following 14 members:

- The chair of the ACC, or his or her designee, who shall serve as chair.
- Four members representing academic affairs administrators and faculty from state universities, appointed by the chair of the BOG.
- Four members representing academic affairs administrators and faculty from FCS institutions, appointed by the chair of the SBE.
- Two members representing faculty from career centers, appointed by the SBE.
- A representative from the Florida Sheriffs Association.
- A representative from the Florida Police Chiefs Association.
- A representative from the CJSTC.

The workgroup must provide recommendations to the BOG and the SBE by March 1, 2023. The bill requires the ACC to approve within 1 year a prioritized list of postsecondary course equivalencies and the minimum postsecondary credit or career education clock hours that must be awarded for law enforcement training and experience. The list must be updated annually. The bill requires state universities, FCS institutions, and career centers to award postsecondary credit or career education clock hours for law enforcement training and experience based on the rules and regulations adopted by the BOG and the SBE.

Adoption Benefits (Section 2)

Present Situation

Section 409.1664, F.S., provides a one-time, lump-sum monetary benefit to a qualifying adoptive employee,[19] veteran, or servicemember who adopts a child within Florida's child welfare system[20] of $10,000 for adopting a child who has special needs[21] or $5,000 for adopting a child who does not have special needs.

[18] The Articulation Coordinating Committee is a K-20 advisory body appointed by the Commissioner of Education. It is comprised of representatives from all levels of public and private education: the State University System, the FCS, independent postsecondary institutions, public schools, nonpublic schools, and career centers. There is also an additional member representing students. Florida Department of Education, *Articulation Coordinating Committee*, http://www.fldoe.org/policy/articulation/committees/articulation-coordinating-committee-ov/meetings.stml (last visited Feb. 24, 2022).

[19] "Qualifying adoptive employee" means a full-time or part-time employee of a state agency, a charter school, or the Florida Virtual School, who is not an independent contractor and who adopts a child within the child welfare system pursuant to ch 63, F.S. Section 409.1664(1)(b), F.S.

[20] "Child within the child welfare system" means a special needs child and any other child who was removed from the child's caregiver due to abuse or neglect and whose permanent custody has been awarded to the department or to a licensed child-placing agency. Section 409.166(2)(c), F.S.

[21] For purposes of the adoption benefit program, a child who has special needs is a child whose permanent custody has been awarded to the Department of Children and Families or to a licensed child-placing agency and who has established significant emotional ties with his or her foster parents or is not likely to be adopted. Section 409.166(2), F.S.

Adoption benefits are awarded on a first-come, first-served basis and subject to appropriation.[22] To obtain the adoption benefit, a qualifying adoptive employee must apply to his or her agency head or to his or her school director. A veteran or servicemember must apply directly to the Department of Children and Families to receive the benefit.[23]

Effect of Proposed Changes

The bill amends s. 409.1664, F.S., to add law enforcement officers who are domiciled in Florida and who adopt children on or after July 1, 2022, eligible for the one-time, lump-sum monetary benefits. The benefit is $25,000 for adopting a child who has special needs and $10,000 for adopting a child who does not have special needs. The bill requires a law enforcement officer to apply to FDLE to obtain the adoption benefit.

Sheriff Salaries (Section 1)

Present Situation

Article VIII, section 1(d) of the Florida Constitution establishes the office of sheriff in each county. Article II, section 5(c) of the Florida Constitution provides that the powers, duties, compensation, and method of payment of state and county officers, including the sheriff, are fixed by law. Section 145.071, F.S., provides a schedule for calculating the salary of each sheriff based on county population as follows:

Population Group	County Population Range		Base Salary	Group Rate
	Minimum	Maximum		
I	0	49,999	$23,350	$0.07875
II	50,000	99,999	$26,500	$0.06300
III	100,000	199,999	$29,650	$0.02625
IV	200,000	399,999	$32,275	$0.01575
V	400,000	999,999	$35,425	$0.00525
VI	1,000,000	–	$38,575	$0.00400

A sheriff's salary is calculated by adjusting the base salary for a sheriff's county to reflect the actual population within the given range,[24] then, to account for inflation, multiplying the result by several factors that are provided in statute.[25]

The compensation requirements apply to sheriffs in all counties of the state, except those sheriffs from counties:

- Whose salaries are not subject to being set by the Legislature because of the provisions of a county home rule charter;[26] or

[22] Section 409.1664(2)(c) and (3), F.S.
[23] Section 409.1664(3), F.S.
[24] The base salary is adjusted by multiplying the appropriate group rate by the population in excess of the minimum for the population group. The result is added to the base salary for the population group. Section 145.071(1), F.S.
[25] Section 145.19, F.S.
[26] There are currently 20 charter counties in Florida: Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, Volusia, and Wakulla. Florida

- With a consolidated form of government as provided in ch. 67-1320, Laws of Florida.[27]

Effect of Proposed Changes

The bill amends s. 145.071, F.S., to increase the base salary for a sheriff in each of the six population groups by $5,000 as follows:

Population Group	County Population Range		Base Salary	Group Rate
	Minimum	Maximum		
I	0	49,999	$28,350	$0.07875
II	50,000	99,999	$31,500	$0.06300
III	100,000	199,999	$34,650	$0.02625
IV	200,000	399,999	$37,275	$0.01575
V	400,000	999,999	$40,425	$0.00525
VI	1,000,000	–	$43,575	$0.00400

Law Enforcement Training and Education

Basic Abilities Test Exemption (Section 5)

Present Situation

The CJSTC was established for the purpose of ensuring criminal justice officers in Florida are ethical, qualified, and well-trained.[28] As part of its responsibility in establishing training standards for law enforcement officers, the CJSTC is required to design, implement, maintain, evaluate, and revise entry requirements for the basic recruit training program.[29]
Section 943.17(1)(g), F.S., requires the CJSTC to limit entry to basic recruit training programs to those persons who have passed a basic skills examination and assessment instrument, commonly referred to as the Basic Abilities Test (BAT).[30] Out-of-state law enforcement officers, federal officers, certain members of the special operations forces, and previously certified Florida law enforcement officers may qualify for an exemption from the BAT as part of the equivalency of training process.[31]

The BAT is a 97 question, 90 minute examination that measures "minimum competencies" as adopted by the CJSTC in three sections: behavioral attributes, memorization, and cognitive abilities.[32] A candidate must receive a score of 70 of higher across all three sections of the BAT

Association of Counties, *Charter County Information*, https://www.fl-counties.com/charter-county-information (last visited Feb. 24, 2022).
[27] Section 145.012, F.S.
[28] Florida Department of Law Enforcement, *Criminal Justice Standards & Training Commission*, https://www.fdle.state.fl.us/CJSTC/Commission/CJSTC-Home.aspx (last visited Feb. 24, 2022).
[29] Section 943.17, F.S.
[30] Florida Department of Law Enforcement, *Basic Abilities Test (BAT)*, https://www.fdle.state.fl.us/CJSTC/Officer-Requirements/Basic-Abilities-Test.aspx (last visited Feb. 24, 2022).
[31] Section 943.131(2), F.S. Florida Department of Law Enforcement, *Equivalency of Training*, http://www.fdle.state.fl.us/CJSTC/Officer-Requirements/Equivalency-of-Training.aspx (last visited Feb. 23, 2022).
[32] Pearson VUE, *The FDLE Basic Abilities Test Exam*, https://home.pearsonvue.com/fdle/bat (last visited Feb. 24, 2022).

to pass the examination.[33] According to FDLE, the pass rate for the law enforcement BAT from FY 2016-17 – FY 2020-21 is 88.31 percent.[34]

Effect of Proposed Changes

The bill amends s. 943.17, F.S., to exempt a person who is a veteran or who holds an associate degree or higher from an accredited college or university from taking the BAT prior to enrolling in a basic recruit training program.

Law Enforcement Training – Health and Wellness (Section 6)

Present Situation

The basic recruit training program for initial certification as a law enforcement officer is 770 hours and consists of the following topics: introduction to law enforcement; legal; interactions in a diverse community; interviewing and report writing; fundamentals of patrol; calls for service; criminal investigations; crime scene to courtroom; critical incidents; traffic and DUI stops; and traffic crash investigations.[35]

After an officer obtains initial certification, as a condition of continued employment or appointment as a law enforcement officer, s. 943.135, F.S., requires the officer to receive at least 40 hours of continued employment training every four years. Current law requires the CJSTC to develop continued education training relating to several topics, such as training for diabetic emergencies,[36] juvenile sexual offender investigations,[37] and interpersonal skills relating to diverse populations.[38] The employing agency must document that the continued employment training is job-related and consistent with the needs of the employing agency and report training completion to the CJSTC.

Effect of Proposed Changes

The bill creates s. 943.1745, F.S., which requires the CJSTC, in consultation with the Florida State University Institute for Justice Research and Development and the Resiliency Behind the Badge Training Program,[39] to develop a training program relating to officer health and wellness principles. At a minimum, the training must include:

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[33] Pearson VUE, *Exam Description*, https://home.pearsonvue.com/getattachment/7093b7e6-bd7f-4f5a-8f93-df30ae23f60a/Florida%20Department%20of%20Law%20Enforcement%20BAT%20Exam%20Description.aspx (last visited Feb. 24, 2022).

[34] Email, Florida Department of Law Enforcement, Bobbie Smith, Legislative Analyst, *RE: Basic Abilities Test*, (Oct. 6, 2021) (on file with Senate Education Committee).

[35] *See* Florida Department of Law Enforcement, *Florida Law Enforcement Academy*, (2020) https://dmingear-irsc.weebly.com/uploads/2/4/4/0/24408602/2020_le_text_2.pdf and *Active Courses*, http://www.fdle.state.fl.us/CJSTC/Curriculum/Active-Courses.aspx (last visited Feb. 24, 2022).

[36] Section 943.1726, F.S.

[37] Section 943.17295, F.S.

[38] Section 943.1716, F.S.

[39] The "Resiliency Behind the Badge" training program, developed by Florida State University's Institute for Justice Research and Development, is a self-paced, interactive, online training program specifically designed to assist law enforcement officers in gaining "a deeper understanding of how their mind and body react to on-the-job stress and learn actionable steps they can take to manage that stress." Florida State University Institute for Justice Research and Development, *Resiliency Behind the Badge*, https://ijrd.csw.fsu.edu/resiliency-behind-badge (last visited Feb. 24, 2022).

- Understanding the role secondary trauma and work-related incidents have on an officer's personal life;
- Methods for identifying and addressing personal and work-related stressors;
- Strategies to better understand when to seek professional help and what kind of professional help to seek; and
- Strategies to normalize conversations about stress, trauma, and mental health within the law enforcement community.

By July 1, 2023, the bill requires the CJSTC to incorporate a training component relating to officer health and wellness principles into the course curriculum required for a law enforcement officer to obtain his or her initial certification and as part of the 40 hours of required instruction for continued employment or appointment as a law enforcement officer.

Family Empowerment Scholarship Program (Section 7)

Present Situation

The Family Empowerment Scholarship (FES) Program was established in 2019 to provide educational options to eligible children of families with limited financial resources (known as FES-Educational Options or EO). For the 2019-2020 academic year, the law allowed 18,000 scholarships to be awarded. Beginning in the 2020-2021 academic year, the maximum number of students participating in the FES-EO Program may annually increase by 1 percent of the state's total public school enrollment. Beginning in the 2021-2022 academic year, a scholarship recipient meeting one of the statutorily-identified criteria is excluded from the maximum number of students allowed to participate.[40]

A student is eligible for the FES-EO Program if the student:
- Is on the direct certification list[41] or the student's household income level does not exceed 185 percent of the federal poverty level;
- Is currently placed, or during the previous state fiscal year was placed, in foster care or in out-of-home care;
- Has a household income level that does not exceed 375 percent of the federal poverty level or an adjusted maximum percent of the federal poverty level that is increased by 25 percentage points in the fiscal year following any fiscal year in which more than five percent of the authorized FES scholarships have not been funded;
- Is a sibling of a student who is participating in the FES Program and such siblings reside in the same household; or
- Is a dependent child of a member of the U.S. Armed Forces.[42]

A student must use the FES-EO Program funds to pay tuition and fees at an eligible private school or to pay for transportation to a public school or lab school that is different from the school to which the student is assigned. Scholarship awards remain in effect until a student

[40] Section 1002.394, F.S.
[41] "Direct certification list" means the certified list of children who qualify for the food assistance program, the Temporary Assistance to Needy Families Program, or the Food Distribution Program on Indian Reservations provided to the Department of Education by the Department of Children and Families. Section 1002.395(2)(c), F.S.
[42] Section 1002.394(12)(a), F.S.

returns to a public school, graduates from high school, or reaches the age of 21, whichever occurs first.[43]

Beginning in the 2021-2022 academic year, the FES Program was expanded to include existing scholarship programs for students with disabilities (known as FES-Unique Abilities or UA).[44] For the 2021-2022 academic year, scholarships for up to 20,000 students can be awarded, and beginning in the 2022-2023 academic year, the maximum number of students with disabilities participating in the FES-UA Program may annually increase by 1 percent or the state's total exceptional student education enrollments, not including gifted students. Certain statutorily-identified students are excluded from the maximum number of students participating in the FES-UA Program.[45]

Effect of Proposed Changes

The bill amends s. 1002.394, F.S., to expand eligibility for the FES-EO Program to include dependent children of law enforcement officers. The bill also excludes dependent children of law enforcement officers from the maximum number of students participating in both the FES-EO and FES-UA Programs.

Public Safety Training in Public Schools

911 Public Safety Telecommunication Training Programs (Section 8)

Present Situation

Section 401.465(2)(a), F.S., requires any person employed as a 911 public safety telecommunicator to be certified by the Department of Health (DOH). A "911 public safety telecommunicator" is a public safety dispatcher or 911 operator whose duties and responsibilities include:

- The answering, receiving, transferring, and dispatching functions related to 911 calls;
- Dispatching law enforcement officers, fire rescue services, emergency medical services, and other public safety services to the scene of an emergency;
- Providing real-time information from federal, state, and local crime databases; or
- Supervising or serving as the command officer to a person or persons having such duties and responsibilities.[46]

To be certified as a 911 public safety telecommunicator, a person must:

- Complete a 911 public safety telecommunication training program;[47]
- Certify that he or she is not addicted to alcohol or any controlled substance;
- Certify that he or she is free from any physical or mental defect that might impair the person's ability to perform his or her duties; and

[43] Section 1002.394, F.S.
[44] Chapter 2021-27, L.O.F.
[45] Section 1002.394(12)(b), F.S.
[46] The term does not include administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel. Section 401.465(1)(a), F.S.
[47] "Public safety telecommunication training program" means a 911 emergency public safety telecommunication training program that the DOH determines to be equivalent to the public safety telecommunication training program curriculum framework developed by the DOE and consists of not less than 232 hours. Section 401.465(1)(c), F.S.

- Submit a completed application and application fee to the DOH.[48]

911 public safety telecommunicator training programs are offered by law enforcement and public safety agencies, FCS institutions, technical colleges, and some public high schools.

Effect of Proposed Changes

The bill creates s. 1003.4933, F.S., to encourage each district school board to establish a public safety telecommunication training program in at least one public high school in a school district or to partner with an existing public safety telecommunication training program operated by a law enforcement agency or FCS institution. The bill requires a school district to allow a student attending a public high school in the district to attend a public safety telecommunication training program at another public high school in the district unless:

- The student's school offers a public safety telecommunication training program;
- The student does not meet the minimum enrollment qualifications for the public safety telecommunication training program; or
- Scheduling of the student's courses of study does not allow the student to attend the public safety telecommunication training program at another public high school in the district.

Law Enforcement Explorer Programs (Section 9)

Present Situation

Law enforcement explorer programs provide young adults between the ages of 14 and 21 with the opportunity to receive experience and training in the law enforcement profession. Participants in explorer programs receive training in the basics of law enforcement, including patrol procedures, traffic control, firearm safety, first aid, and radio procedures. Explorers also may assist certified law enforcement officers in controlled settings, such as assisting with crowd control at parades and athletic events.[49] In Florida, Explorer programs are offered by both sheriff's offices and municipal police departments.[50]

Effect of Proposed Changes

The bill creates s. 1003.49966, F.S., to encourage each district school board to partner with a law enforcement agency to offer a law enforcement explorer program at public middle and high schools, either by integrating the explorer program into existing curriculum or by offering an explorer program as an elective course or an after-school activity. The bill requires a district school board to award course credit if an explorer program is offered as an elective course.

[48] Section 401.465(2)(d), F.S.
[49] Florida Sheriffs Association, *Youth Programs*, https://www.flsheriffs.org/law-enforcement-programs/florida-sheriffs-explorer-association (last visited Feb. 24, 2022).
[50] *Id.* City of Fort Myers Florida Police, *Explorer Program*, https://www.fmpolice.com/247/Explorer-Program (last visited Feb. 24, 2022).

Law Enforcement Appreciation Day (Section 4)

Present Situation

In 1972, the Florida Legislature designated the month of May as "Law Enforcement Appreciation Month."[51] Pursuant to s. 683.11, F.S.:

> [t]he Governor and the mayor of each municipality may issue annually a proclamation designating the month of May as 'Law Enforcement Appreciation Month' and urging all civic, fraternal, and religious organizations and public and private educational institutions to recognize and observe this occasion through appropriate programs, meetings, services, or celebrations in which state, county, and local law enforcement officers are invited to participate.

Effect of Proposed Changes

The bill amends s. 683.11, F.S., to designate May 1 of each year "Law Enforcement Appreciation Day" in Florida and authorizes the Governor and mayor of each municipality to annually issue such a proclamation.

Effective Date (Section 13)

The bill takes effect on July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the Florida Constitution provides that counties and municipalities are not bound by general law requiring such counties or municipalities to spend funds. However, the local governments may be bound if the Legislature has determined that the law fulfills an important state interest and approves the law requiring such expenditure by two-thirds vote of the membership each house of the Legislature. Additionally, the mandates requirements do not apply to laws having an insignificant impact, which is $2.3 million or less for Fiscal Year 2022-2023.[52] The impact of this provisions of this bill related to increasing the base salary of sheriffs if unknown.

B. Public Records/Open Meetings Issues:

None.

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[51] Chapter 72-322, L.O.F.

[52] FLA. CONST. art. VII, s. 18(d). 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), http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited February 24, 2021). This calculation is based on the Demographic Estimating Conference's estimated population adopted on March 3, 2021. The conference packet is available at http://edr.state.fl.us/Content/conferences/population/archives/210303demographic.pdf (last visited February 24, 2022).

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:

Law enforcement officers, both current and new to the state or profession, will benefit from various provisions of this bill through reimbursements of training expenses, exemptions from certain training, or benefits for their children.

C. Government Sector Impact:

Florida Law Enforcement Recruitment Bonus Program

While it is unclear how many new individuals may be recruited into law enforcement in Florida, law enforcement data illustrates a 5-year average of approximately 2,711 initial law enforcement certifications annually. Based upon this historical data, a $5,000 bonus payment indicates the state could expect to expend approximately $13.6 million annually on bonuses for recruitment purposes.

The bill specifies that a one-time bonus payment of up to $5,000 could be provided to newly employed law enforcement officers within the state, contingent upon annual appropriation by the Legislature, and that payments must be prorated subject to the amount appropriated for the program. Neither the bill nor SB 2500 include an appropriation for this program. However, HB 5001 includes an appropriation of $20 million.

Additionally, workload created within the Department of Economic Opportunity associated with administering the program is also indeterminate. However, administering this law enforcement bonus program can likely be handled within existing resources, similar to how the department has managed the pandemic first responder's bonus payment program in Fiscal Year 2021-2022.

Florida Law Enforcement Academy Scholarship Program

The in-state tuition rate for a career certificate at a FCS institution or a school district career center is $2.33 per contact hour.[53] The law enforcement basic recruit training program is 770 contact hours. This equates to an average in-state program tuition cost of $1,794.

The bill specifies that awarded scholarship amounts are equal to tuition and specified fees and up to $1,000 for eligible expenses. Costs associated with out-of-state fees for nonresident trainees are excluded. Furthermore, the bill provides any potential expenditures for the scholarship program are contingent upon annual appropriation by the Legislature on a first-come, first-served basis. Neither the bill nor SB 2500 include an appropriation for this program. However, HB 5001 includes an appropriation of $5 million.

Equivalency Training Reimbursement Program

Equivalency training or assessments conducted at a FCS institution or school district technical center could be subject to the tuition and fees of the respective postsecondary institution. The officer certification examination is administered electronically by a third party contract provider at authorized testing sites throughout the state. The standard fee for taking the exam is $100, plus any additional fees that may be assessed by individual testing sites.[54]

The bill specifies that the reimbursement for equivalency training is contingent upon annual appropriation by the Legislature. Neither the bill nor SB 2500 include an appropriation for this program. However, HB 5001 includes an appropriation of $1 million.

Adoption Benefits

The bill adds law enforcement officers to the list of individuals who may receive an adoption benefit pursuant to s. 409.1664, F.S. The payment of adoption benefits pursuant to s. 409.1664, F.S., is contingent upon an annual appropriation by the Legislature. Neither the bill nor SB 2500 include an appropriation for this program. However, HB 5001 includes an appropriation of about $3 million.

Sheriff Salaries

The fiscal impact on counties related to sheriff salary increases is indeterminate. The bill increases sheriffs' base salaries by $5,000. The annual salary for each sheriff is based on a statutory formula contained in ss. 145.071 and 145.19, F.S. In September of each year, the Office of Economic and Demographic Research issues a report which contains the

[53] Section 1009.22(3)(c), F.S.
[54] Florida Department of Law Enforcement, *State Officer Certification Exam*, http://www.fdle.state.fl.us/CJSTC/Exam/Exam-Home.aspx (last visited Feb. 24, 2022)

annual formula-based calculations of the salaries of elected county constitutional officers.[55]

Law Enforcement Training

The FDLE estimates that nonrecurring costs for developing the basic skills and continued education training required by the bill, as well as nonrecurring updates to the department's information technology systems will cost $54,291.[56] This cost can be absorbed within existing resources.

Family Empowerment Scholarship Program

Expanding the Family Empowerment Scholarship Program will have an indeterminate fiscal impact to the Florida Education Finance Program (FEFP). The FEFP is the primary funding source for K-12 education in Florida, to include both the FES-EO and FES-UA Programs. It is currently unknown how many of the 52,383 law enforcement officers[57] currently in Florida may be eligible and enroll his or her student in either the FES-EO or FES-UA Program. It is also unknown how many of these individuals already participate in the FES-EO or FES-UA Program. To the extent that law enforcement officers opt to enroll into the program, the fiscal impact on the FEFP is indeterminate.

For each FES-EO scholarship awarded to a dependent child of a law enforcement officer who was not funded in the FEFP for the 2021-2022 academic year or was not already participating in the FES-EO Program, there may be a fiscal impact to the FEFP.

For the FES-UA Program, the bill excludes scholarships awarded to dependent children of law enforcement officers from the maximum number of allowable participants. It is unclear how many current FES-UA scholarships would now be excluded from the maximum number participating cap in addition to how many new FES-UA scholarships will be awarded that are also excluded from the cap. Both types would have a potential fiscal impact to the FEFP.

The PreK-12 Enrollment Impact Conference will meet on Friday, February 25, 2022, to estimate any impact of the bill.

College Credit for Law Enforcement Training

The fiscal impact on state funding pertaining to students taking fewer credit or clock hours is indeterminate. By requiring the Board of Governors to adopt regulations and the State Board of Education to adopt rules to allow eligible law enforcement officers to earn postsecondary credit for college-level training and education, the bill could decrease the amount of time and cost for officers to receive a postsecondary degree. This may result in a slight decrease of tuition and fee revenue for state postsecondary education entities.

[55] Office of Economic and Demographic Research, *Salaries of Elected County Constitutional Officers and School District Officials for Fiscal Year 2021-22*, http://edr.state.fl.us/Content/local-government/reports/finsal21.pdf (last visited Feb. 24, 2022).
[56] Florida Department of Law Enforcement, *Agency Analysis of 2022 House Bill 3*, p.4 (Jan. 18, 2022)
[57] Email, Florida Department of Law Enforcement, Ron Draa, RE: State of Florida Law Enforcement Officer Count (Jan. 28, 2022) (on file with the Senate Education Committee).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 145.071, 409.1664, 683.11, 943.17, and 1002.394.

This bill creates the following sections of the Florida Statutes: 445.08, 943.1745, 1003.4933, 1003.49966, 1004.098, 1009.896, and 1009.8961.

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 law enforcement officer benefits, recruitment, and training; amending s. 145.071, F.S.; revising salary minimums for county sheriffs; amending s. 409.1664, F.S.; providing for adoption benefits for law enforcements officers; providing requirements to receive such benefits; providing procedures to obtain such benefits; creating s. 445.08, F.S.; creating the Florida Law Enforcement Recruitment Bonus Payment Program within the Department of Economic Opportunity; providing definitions; providing for one-time bonus payments to newly-employed law enforcement officers; providing requirements for award of bonus payments; requiring the department to develop an annual plan for the administration of the program and distribution of payments; authorizing employing agencies to assist the department with the collection of specified data to collect such payments; providing plan requirements; providing eligibility requirements for the plan; requiring the department to consult quarterly with the commission to verify specified information; providing for reporting; authorizing the department to submit certain information for a specified purpose; providing for use of a funding; requiring rulemaking; providing for expiration of the program; amending s. 683.11,

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F.S.; providing for the designation of "Law Enforcement Appreciation Day"; amending s. 943.17, F.S.; providing an exemption from certain law enforcement officer training requirements for military veterans; creating s. 943.1745, F.S.; providing requirements for skills training for law enforcement officers relating to officer health and safety; amending s. 1002.394, F.S.; providing eligibility for the Family Empowerment Scholarship Program for children of law enforcement officers; creating s. 1003.4933, F.S.; providing for each district school board to establish a public safety telecommunication training program; authorizing the district to partner with programs operated by certain entities; requiring school districts to allow certain students to enroll in such a program under specified circumstances; providing exceptions; creating s. 1003.49966, F.S.; providing for each district school board to offer a law enforcement explorer program; authorizing the school board to partner with law enforcement agencies to offer such programs; providing for a student to receive course credit if such a program is offered as an elective; creating s. 1004.098, F.S.; providing definitions; requiring the Board of Governors and the State Board of Education to create a process that

enables eligible law enforcement officers or former law enforcement officers to earn uniform postsecondary credit across all Florida public postsecondary educational institutions for college-level training and education acquired while serving as a law enforcement officer; requiring the Articulation Coordinating Committee to convene a workgroup by a specified date to facilitate such process; providing membership of the workgroup; providing a timetable for the process; creating s. 1009.896, F.S.; providing definitions; creating the Florida Law Enforcement Academy Scholarship Program; providing requirements for receipt of such a scholarship; providing procedures for the program; proving for the amount of such awards; requiring rulemaking; creating s. 1009.8961, F.S.; providing definitions; providing for reimbursement for out-of-state and special operations forces law enforcement equivalency training; providing requirements for receipt of such reimbursement; providing procedures for such reimbursement; providing for amount of such awards; requiring rulemaking; providing an effective date.

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

Section 1. Subsection (1) of section 145.071, Florida Statutes, is amended to read:

145.071 Sheriff.—

(1) Each sheriff shall receive as salary the amount indicated, based on the population of his or her county. In addition, a compensation shall be made for population increments over the minimum for each group, which shall be determined by multiplying the population in excess of the minimum for the group times the group rate.

Pop. Group	County Pop. Range		Base Salary	Group Rate
	Minimum	Maximum		
I	-0-	49,999	28,350 ~~$23,350~~	$0.07875
II	50,000	99,999	31,500 ~~26,500~~	0.06300
III	100,000	199,999	34,650 ~~29,650~~	0.02625
IV	200,000	399,999	37,275	0.01575

			~~32,275~~	
V			40,425	
	400,000	999,999	~~35,425~~	0.00525
VI			43,575	
	1,000,000		~~38,575~~	0.00400

Section 2. Paragraphs (b) through (e) of subsection (1) of section 409.1664, Florida Statutes, are redesignated as paragraphs (c) through (f), respectively, a new paragraph (b) is added to that subsection, and subsections (2), (3), (4), and (6) of that section are amended, to read:

409.1664 Adoption benefits for qualifying adoptive employees of state agencies, veterans, ~~and~~ servicemembers, and law enforcement officers.—

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

(b) "Law enforcement officer" has the same meaning as provided in s. 943.10(1).

(2) A qualifying adoptive employee, veteran, or servicemember who adopts a child within the child welfare system who has special needs described in s. 409.166(2)(a)2. is eligible to receive a lump-sum monetary benefit in the amount of $10,000 per such child, subject to applicable taxes. A law enforcement officer who adopts a child within the child welfare

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system who has special needs described in s. 409.166(2)(a)2. is eligible to receive a lump-sum monetary benefit in the amount of $25,000 per such child, subject to applicable taxes. A qualifying adoptive employee, veteran, or servicemember who adopts a child within the child welfare system who does not have special needs described in s. 409.166(2)(a)2. is eligible to receive a lump-sum monetary benefit in the amount of $5,000 per such child, subject to applicable taxes. A law enforcement officer who adopts a child within the child welfare system who does not have special needs described in s. 409.166(2)(a)2. is eligible to receive a lump-sum monetary benefit in the amount of $10,000 per each such child, subject to applicable taxes. A qualifying adoptive employee of a charter school or the Florida Virtual School may retroactively apply for the monetary benefit provided in this subsection if such employee was employed by a charter school or the Florida Virtual School when he or she adopted a child within the child welfare system pursuant to chapter 63 on or after July 1, 2015. A veteran or servicemember may apply for the monetary benefit provided in this subsection if he or she is domiciled in this state and adopts a child within the child welfare system pursuant to chapter 63 on or after July 1, 2020. A law enforcement officer may apply for the monetary benefit provided in this subsection if he or she is domiciled in this state and adopts a child within the child welfare system pursuant to chapter 63 on or after July 1, 2022.

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(a) Benefits paid to a qualifying adoptive employee who is a part-time employee must be prorated based on the qualifying adoptive employee's full-time equivalency at the time of applying for the benefits.

(b) Monetary benefits awarded under this subsection are limited to one award per adopted child within the child welfare system.

(c) The payment of a lump-sum monetary benefit for adopting a child within the child welfare system under this section is subject to a specific appropriation to the department for such purpose.

(3) A qualifying adoptive employee must apply to his or her agency head, or to his or her school director in the case of a qualifying adoptive employee of a charter school or the Florida Virtual School, to obtain the monetary benefit provided in subsection (2). A veteran or servicemember must apply to the department to obtain the benefit. A law enforcement officer must apply to the Department of Law Enforcement to obtain the benefit. Applications must be on forms approved by the department and must include a certified copy of the final order of adoption naming the applicant as the adoptive parent. Monetary benefits shall be approved on a first-come, first-served basis based upon the date that each fully completed application is received by the department.

(4) This section does not preclude a qualifying adoptive

employee, veteran, ~~or~~ servicemember, or law enforcement officer from receiving adoption assistance for which he or she may qualify under s. 409.166 or any other statute that provides financial incentives for the adoption of children.

(6) The department may adopt rules to administer this section. The rules may provide for an application process such as, but not limited to, an open enrollment period during which qualifying adoptive employees, veterans, ~~or~~ servicemembers, or law enforcement officers may apply for monetary benefits under this section.

Section 3. Section 445.08, Florida Statutes, is created to read:

445.08 Florida Law Enforcement Recruitment Bonus Payment Program.—

(1) For the purposes of this section, the term:

(a) "Commission" means the Criminal Justice Standards and Training Commission within the Department of Law Enforcement.

(b) "Employing agency" has the same meaning as provided in s. 943.10(4).

(c) "Law enforcement officer" has the same meaning as provided in s. 943.10(1).

(d) "Newly employed officer" means a person who gains or is appointed to full-time employment as a certified law enforcement officer with a Florida criminal justice employing agency on or after July 1, 2022, and who has never before been

employed as a law enforcement officer in this state.

(e) "Program" means the Florida Law Enforcement Recruitment Bonus Payment Program.

(2) There is created within the department the Florida Law Enforcement Recruitment Bonus Payment Program, to aid in the recruitment of law enforcement officers within the state. The purpose of the program is to administer one-time bonus payments of up to $5,000 to each newly employed officer within the state. Bonus payments provided to eligible newly employed officers are contingent upon legislative appropriations and shall be prorated subject to the amount appropriated for the program.

(3) Each bonus payment shall be adjusted to include 7.65 percent for the officer's share of Federal Insurance Contribution Act tax on the payment.

(4) The department shall develop an annual plan for the administration of the program and distribution of bonus payments. Applicable employing agencies shall assist the department with the collection of any data necessary to determine bonus payment amounts and to distribute the bonus payments, and shall otherwise provide the department with any information or assistance needed to fulfill the requirements of this section. At a minimum, the plan must include:

(a) The method for determining the estimated number of newly employed officers to gain or be appointed to full-time employment during the applicable fiscal year.

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(b) The minimum eligibility requirements a newly employed officer must meet to receive and retain a bonus payment, which must include:

1. Obtaining certification for employment or appointment as a law enforcement officer pursuant to s. 943.1395.

2. Gaining full-time employment with a Florida criminal justice agency.

3. Maintaining continuous full-time employment with a Florida criminal justice agency for at least 2 years from the date on which the officer obtained certification. The required 2-year employment period may be satisfied by maintaining employment at one or more employing agencies, but such period must not contain any break in service longer than 15 calendar days.

(c) The method that will be used to determine the bonus payment amount to be distributed to each newly employed officer.

(d) The method that will be used to distribute bonus payments to applicable employing agencies for distribution to eligible officers. Such method should prioritize distributing bonus payments to eligible officers in the most efficient and quickest manner possible.

(e) The estimated cost to the department associated with developing and administering the program and distributing bonus payment funds.

(f) The method by which an officer must reimburse the

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state if he or she received a bonus payment under the program, but failed to maintain continuous employment for the required 2-year period. Reimbursement shall not be required if an officer is discharged by his or her employing agency for a reason other than misconduct as designated on the affidavit of separation completed by the employing agency and maintained by the commission.

The department may establish other criteria deemed necessary to determine bonus payment eligibility and distribution.

(5) The department shall consult quarterly with the commission to verify the certification of newly employed officers and affidavits of separation submitted to the commission which detail officer misconduct.

(6) The department shall submit the plan to the Executive Office of the Governor's Office of Policy and Budget, the chair of the Senate Appropriations Committee, and the chair of the House Appropriations Committee by October 1 of each year. The department is authorized to submit budget amendments pursuant to chapter 216 as necessary to release appropriated funds for distribution to applicable employing agencies under this program.

(7) The funding allocation for the bonus payments must be used solely to comply with the requirements of this section, but applicable collective bargaining units are not otherwise

precluded from wage negotiation.

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

(9) This section expires July 1, 2025.

Section 4. Section 683.11, Florida Statutes, is amended to read:

683.11 Law Enforcement Appreciation Day and Law Enforcement Appreciation Month.—

(1) May 1 of each year is hereby designated as "Law Enforcement Appreciation Day."

(2)~~(1)~~ The month of May of each year is hereby designated as "Law Enforcement Appreciation Month."

(3)~~(2)~~ The Governor and the mayor of each municipality may issue annually a proclamation designating May 1 as "Law Enforcement Appreciation Day" and the month of May as "Law Enforcement Appreciation Month" and urging all civic, fraternal, and religious organizations and public and private educational institutions to recognize and observe this occasion through appropriate programs, meetings, services, or celebrations in which state, county, and local law enforcement officers are invited to participate.

Section 5. Paragraph (g) of subsection (1) of section 943.17, Florida Statutes, is amended to read:

943.17 Basic recruit, advanced, and career development training programs; participation; cost; evaluation.—The

commission shall, by rule, design, implement, maintain, evaluate, and revise entry requirements and job-related curricula and performance standards for basic recruit, advanced, and career development training programs and courses. The rules shall include, but are not limited to, a methodology to assess relevance of the subject matter to the job, student performance, and instructor competency.

(1) The commission shall:

(g) Assure that entrance into the basic recruit training program for law enforcement and correctional officers be limited to those who have passed a basic skills examination and assessment instrument, based on a job task analysis in each discipline and adopted by the commission. However, a person is not required to take the basic skills examination and assessment instrument before entering a law enforcement officer basic recruit training program if he or she is a veteran as defined in s. 1.01(14) or holds an associate degree or higher from an accredited college or university.

Section 6. Section 943.1745, Florida Statutes, is created to read:

943.1745 Training relating to officer health and wellness principles.—

(1) By July 1, 2023, the commission shall incorporate into the course curriculum required for initial certification of a law enforcement officer instruction on health and wellness

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principles specific to the law enforcement profession. The commission shall consult with the Florida State University Institute for Justice Research and Development and the Resiliency Behind the Badge training program to develop the basic skills training component relating to officer health and wellness principles. The training must include, but need not be limited to, understanding the role secondary trauma and work related incidents have on the personal life of an officer; methods for identifying and addressing personal and work related stressors; strategies to better understand when to seek professional help and what kind of professional help to seek; and strategies to normalize conversations about stress, trauma, and mental health within the law enforcement community.

(2) By July 1, 2023, the commission shall by rule require that each law enforcement officer receive, as part of the 40 hours of required instruction for continued employment or appointment as an officer, instruction on health and wellness principles specific to the law enforcement profession. The commission shall consult with the Florida State University Institute for Justice Research and Development and the Resiliency Behind the Badge training program to develop the training component relating to officer health and wellness principles. The training must include, but need not be limited to, understanding the role secondary trauma and work related incidents have on the personal life of an officer; methods for

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identifying and addressing personal and work related stressors; strategies to better understand when to seek professional help and what kind of professional help to seek; and strategies to normalize conversations about stress, trauma, and mental health within the law enforcement community.

Section 7. Paragraphs (k) and (l) of subsection (2) of section 1002.394, Florida Statutes, are redesignated as paragraphs (l) and (m), respectively, a new paragraph (k) is added to that subsection, and paragraph (a) of subsection (3) and subsection (12) of that section are amended, to read:

1002.394 The Family Empowerment Scholarship Program.—

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

(k) "Law enforcement officer" has the same meaning as provided in s. 943.10(1).

(3) SCHOLARSHIP ELIGIBILITY.—

(a) A parent of a student may request and receive from the state a scholarship for the purposes specified in paragraph (4)(a) if:

1. The student is on the direct certification list pursuant to s. 1002.395(2)(c) or the student's household income level does not exceed 185 percent of the federal poverty level;

2. The student is currently placed, or during the previous state fiscal year was placed, in foster care or in out-of-home care as defined in s. 39.01;

3. The student's household income level does not exceed

375 percent of the federal poverty level or an adjusted maximum percent of the federal poverty level that is increased by 25 percentage points in the fiscal year following any fiscal year in which more than 5 percent of the available scholarships authorized under paragraph (12)(a) have not been funded;

4. The student is a sibling of a student who is participating in the scholarship program under this subsection and such siblings reside in the same household; or

5. The student is a dependent child of a member of the United States Armed Forces.

6. The student is a dependent child of a law enforcement officer.

Priority must be given to a student whose household income level does not exceed 185 percent of the federal poverty level or who is in foster care or out-of-home care.

(12) SCHOLARSHIP FUNDING AND PAYMENT.—

(a)1. Scholarships for students determined eligible pursuant to paragraph (3)(a) are established for up to 18,000 students annually beginning in the 2019-2020 school year. Beginning in the 2020-2021 school year, the maximum number of students participating in the scholarship program under this section shall annually increase by 1.0 percent of the state's total public school student enrollment. An eligible student who meets any of the following requirements shall be excluded from

the maximum number of students if the student:

a. Received a scholarship pursuant to s. 1002.395 during the previous school year but did not receive a renewal scholarship based solely on the eligible nonprofit scholarship-funding organization's lack of available funds after the organization fully exhausted its efforts to use funds available for awards under ss. 1002.395 and 1002.40(11)(i). Eligible nonprofit scholarship-funding organizations with students who meet the criterion in this subparagraph must annually notify the department in a format and by a date established by the department. The maximum number of scholarships awarded pursuant to this subparagraph shall not exceed 15,000 per school year;

b. Is a dependent child of a law enforcement officer or a member of the United States Armed Forces, a foster child, or an adopted child; or

c. Is determined eligible pursuant to subparagraph (3)(a)1. or subparagraph (3)(a)2. and either spent the prior school year in attendance at a Florida public school or, beginning in the 2022-2023 school year, is eligible to enroll in kindergarten. For purposes of this subparagraph, the term "prior school year in attendance" means that the student was enrolled and reported by a school district for funding during either the preceding October or February Florida Education Finance Program surveys in kindergarten through grade 12, which includes time spent in a Department of Juvenile Justice commitment program if

funded under the Florida Education Finance Program.

2. The scholarship amount provided to a student for any single school year shall be for tuition and fees for an eligible private school, not to exceed annual limits, which shall be determined in accordance with this subparagraph. The calculated amount for a participating student shall be based upon the grade level and school district in which the student was assigned as 100 percent of the funds per unweighted full-time equivalent in the Florida Education Finance Program for a student in the basic program established pursuant to s. 1011.62(1)(c)1., plus a per-full-time equivalent share of funds for all categorical programs, except for the Exceptional Student Education Guaranteed Allocation.

3. The amount of the scholarship shall be the calculated amount or the amount of the private school's tuition and fees, whichever is less. The amount of any assessment fee required by the participating private school and any costs to provide a digital device, including Internet access, if necessary, to the student may be paid from the total amount of the scholarship.

4. A scholarship of $750 may be awarded to a student who is determined eligible pursuant to subparagraph (3)(a)1. or subparagraph (3)(a)2. and enrolled in a Florida public school that is different from the school to which the student was assigned or in a lab school as defined in s. 1002.32 if the school district does not provide the student with transportation

to the school.

5. Upon notification from the organization on July 1, September 1, December 1, and February 1 that an application has been approved for the program, the department shall verify that the student is not prohibited from receiving a scholarship pursuant to subsection (6). The organization must provide the department with the documentation necessary to verify the student's participation. Upon verification, the department shall transfer, from state funds only, the amount calculated pursuant to subparagraph 2. to the organization for quarterly disbursement to parents of participating students each school year in which the scholarship is in force. For a student exiting a Department of Juvenile Justice commitment program who chooses to participate in the scholarship program, the amount of the Family Empowerment Scholarship calculated pursuant to subparagraph 2. must be transferred from the school district in which the student last attended a public school before commitment to the Department of Juvenile Justice. When a student enters the scholarship program, the organization must receive all documentation required for the student's participation, including the private school's and the student's fee schedules, at least 30 days before the first quarterly scholarship payment is made for the student.

6. The initial payment shall be made after the organization's verification of admission acceptance, and

subsequent payments shall be made upon verification of continued enrollment and attendance at the private school. Payment must be by individual warrant made payable to the student's parent or by funds transfer or any other means of payment that the department deems to be commercially viable or cost-effective. If the payment is made by warrant, the warrant must be delivered by the organization to the private school of the parent's choice, and the parent shall restrictively endorse the warrant to the private school. An organization shall ensure that the parent to whom the warrant is made has restrictively endorsed the warrant to the private school for deposit into the account of the private school or that the parent has approved a funds transfer before any scholarship funds are deposited.

(b)1. Scholarships for students determined eligible pursuant to paragraph (3)(b) are established for up to 20,000 students annually beginning in the 2021-2022 school year. Beginning in the 2022-2023 school year, the maximum number of students participating in the scholarship program under this section shall annually increase by 1.0 percent of the state's total exceptional student education full-time equivalent student enrollment, not including gifted students. An eligible student who meets any of the following requirements shall be excluded from the maximum number of students if the student:

a. Received specialized instructional services under the Voluntary Prekindergarten Education Program pursuant to s.

1002.66 during the previous school year and the student has a current IEP developed by the local school board in accordance with rules of the State Board of Education;

b. Is a dependent child of a law enforcement officer or a member of the United States Armed Forces, a foster child, or an adopted child;

c. Spent the prior school year in attendance at a Florida public school or the Florida School for the Deaf and the Blind. For purposes of this subparagraph, the term "prior school year in attendance" means that the student was enrolled and reported by:

(I) A school district for funding during either the preceding October or February Florida Education Finance Program surveys in kindergarten through grade 12, which includes time spent in a Department of Juvenile Justice commitment program if funded under the Florida Education Finance Program;

(II) The Florida School for the Deaf and the Blind during the preceding October or February student membership surveys in kindergarten through grade 12;

(III) A school district for funding during the preceding October or February Florida Education Finance Program surveys, was at least 4 years of age when enrolled and reported, and was eligible for services under s. 1003.21(1)(e); or

(IV) Received a John M. McKay Scholarship for Students with Disabilities in the 2021-2022 school year.

2. For a student who has a Level I to Level III matrix of services or a diagnosis by a physician or psychologist, the calculated scholarship amount for a student participating in the program must be based upon the grade level and school district in which the student would have been enrolled as the total funds per unweighted full-time equivalent in the Florida Education Finance Program for a student in the basic exceptional student education program pursuant to s. 1011.62(1)(c)1. and (e)1.c., plus a per full-time equivalent share of funds for all categorical programs, as funded in the General Appropriations Act, except that for the exceptional student education guaranteed allocation as provided in s. 1011.62(1)(e)1.c. and 2., the funds must be allocated based on the school district's average exceptional student education guaranteed allocation funds per exceptional student education full-time equivalent student.

3. For a student with a Level IV or Level V matrix of services, the calculated scholarship amount must be based upon the school district to which the student would have been assigned as the total funds per full-time equivalent for the Level IV or Level V exceptional student education program pursuant to s. 1011.62(1)(c)2.a. or b., plus a per-full time equivalent share of funds for all categorical programs, as funded in the General Appropriations Act.

4. For a student who received a Gardiner Scholarship

pursuant to s. 1002.385 in the 2020-2021 school year, the amount shall be the greater of the amount calculated pursuant to subparagraph 2. or the amount the student received for the 2020-2021 school year.

5. For a student who received a John M. McKay Scholarship pursuant to s. 1002.39 in the 2020-2021 school year, the amount shall be the greater of the amount calculated pursuant to subparagraph 2. or the amount the student received for the 2020-2021 school year.

6. Upon notification from an organization on July 1, September 1, December 1, and February 1 that an application has been approved for the program, the department shall verify that the student is not prohibited from receiving a scholarship pursuant to subsection (6). The organization must provide the department with the documentation necessary to verify the student's participation.

7. Upon verification, the department shall release, from state funds only, the student's scholarship funds to the organization, to be deposited into the student's account in four equal amounts no later than September 1, November 1, February 1, and April 1 of each school year in which the scholarship is in force.

8. Accrued interest in the student's account is in addition to, and not part of, the awarded funds. Program funds include both the awarded funds and accrued interest.

9. The organization may develop a system for payment of benefits by funds transfer, including, but not limited to, debit cards, electronic payment cards, or any other means of payment which the department deems to be commercially viable or cost-effective. A student's scholarship award may not be reduced for debit card or electronic payment fees. Commodities or services related to the development of such a system must be procured by competitive solicitation unless they are purchased from a state term contract pursuant to s. 287.056.

10. Moneys received pursuant to this section do not constitute taxable income to the qualified student or the parent of the qualified student.

Section 8. Section 1003.4933, Florida Statutes, is created to read:

1003.4933 911 public safety telecommunication training programs.—

(1)(a) Each district school board is encouraged to establish a public safety telecommunication training program as defined in s. 401.465 in at least one public high school in the district.

(b) The district school board may partner with an existing public safety telecommunication training program operated by a law enforcement agency or Florida College System Institution.

(2)(a) A school district shall allow a student attending a public high school in the district to enroll in the public

safety telecommunication training program at another public high school in the district unless:

1. The student's school offers a public safety telecommunication training program;

2. The student does not meet the minimum enrollment qualifications for the public safety telecommunication training program; or

3. Scheduling of the student's courses of study does not allow the student to attend the public safety telecommunication training program at another public high school in the district.

(b) This subsection does not require a school district to provide transportation for a student to attend the public safety telecommunication training program at another public high school in the district.

Section 9. Section 1003.49966, Florida Statutes, is created to read:

1003.49966 Law Enforcement Explorer Program.—

(1) Each district school board is encouraged to partner with a law enforcement agency to offer a law enforcement explorer program at public middle and high schools in the state to educate students about law enforcement careers and the criminal justice system.

(2) A law enforcement explorer program may be integrated into existing curriculum, offered as an elective course, or offered as an after-school program.

(3) If a district school board offers a law enforcement explorer program as an elective course, a student enrolled in such course shall receive middle school or high school course credit for successful completion of the course.

Section 10. Section 1004.098, Florida Statutes, is created to read:

1004.098 College credit for law enforcement training.—

(1) As used in this section:

(a) "Law enforcement officer" has the same meaning as provided in s. 943.10(1).

(b) "Law enforcement training and experience" means training courses, specialized assignments or work experience, and other similar activities performed by a person during his or her service as a law enforcement officer that require education beyond the basic skills of an officer.

(2) The Board of Governors shall adopt regulations and the State Board of Education shall adopt rules that create a process that enables eligible law enforcement officers or former law enforcement officers to earn uniform postsecondary credit across all Florida public postsecondary educational institutions for college-level training and education acquired while serving as a law enforcement officer. The regulations and rules shall include procedures for credential evaluation and the uniform award of postsecondary credit or career education clock hours, including, but not limited to, equivalency and alignment of law enforcement

training with appropriate postsecondary courses and course descriptions.

(3) The Articulation Coordinating Committee shall convene a workgroup by September 1, 2022, which is responsible for developing a process for determining postsecondary course equivalencies and the minimum postsecondary credit or career education clock hours that must be awarded for law enforcement training and experience.

(a) The workgroup shall be composed of the following 14 members:

1. The chair of the Articulation Coordinating Committee, or his or her designee, who shall serve as chair.

2. Four members representing academic affairs administrators and faculty from state universities, appointed by the chair of the Board of Governors.

3. Four members representing academic affairs administrators and faculty from Florida College System institutions, appointed by the chair of the State Board of Education.

4. Two members representing faculty from career centers, appointed by the State Board of Education.

5. A representative from the Florida Sheriffs Association.

6. A representative from the Florida Police Chiefs Association.

7. A representative from the Criminal Justice Standards

and Training Commission.

(b) The Office of K-20 Articulation shall provide administrative support for the workgroup.

(c) The workgroup shall establish a process for prioritizing and determining postsecondary course equivalencies and the minimum postsecondary credit or career education clock hours that must be awarded for law enforcement training and experience. The workgroup shall provide recommendations to the Board of Governors and the State Board of Education by March 1, 2023, for approval at the next meeting of each board to allow for adequate public notice. The workgroup shall terminate upon submission of its recommendations.

(d) Upon approval of the workgroup's recommendations by the Board of Governors and the State Board of Education, the Articulation Coordinating Committee shall facilitate the review of law enforcement training and experience for postsecondary course equivalencies and the minimum postsecondary credit or career education clock hours that must be awarded in accordance with the approved process.

(e) Within 1 year after approval of the workgroup's recommendations by the Board of Governors and the State Board of Education pursuant to paragraph (c), the Articulation Coordinating Committee shall approve a prioritized list of postsecondary course equivalencies and the minimum postsecondary credit or career education clock hours that must be awarded for

law enforcement training and experience. The list must be updated annually. The Board of Governors and the State Board of Education shall timely adopt the list approved by the Articulation Coordinating Committee at the next meeting of each board to allow for adequate public notice. For the purpose of statewide application, postsecondary course equivalencies and the minimum postsecondary credit or career education clock hours that must be awarded for law enforcement training and experience shall be delineated by the State Board of Education and the Board of Governors in the statewide articulation agreement required by s. 1007.23(1).

(f) State universities, Florida College System institutions, and career centers must award postsecondary credit or career education clock hours for law enforcement training and experience based on the list adopted by the Board of Governors and the State Board of Education pursuant to paragraph (e) if the credit or career education clock hours are applicable toward the student's degree or certificate. Institutions may award additional postsecondary credit or career education clock hours if appropriate. Credit or career education clock hours awarded in accordance with minimum postsecondary credit and clock hour requirements, respectively, are guaranteed to transfer to other state universities, Florida College System institutions, and career centers.

Section 11. Section 1009.896, Florida Statutes, is created

to read:

1009.896 Florida Law Enforcement Academy Scholarship Program.—

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

(a) "Commission" means the Criminal Justice Standards and Training Commission within the Department of Law Enforcement.

(b) "Department" means the Department of Education.

(c) "Employing agency" has the same meaning as provided in s. 943.10(4).

(d) "Law enforcement officer" has the same meaning as provided in s. 943.10(1).

(e) "Scholarship program" means the Florida Law Enforcement Academy Scholarship Program.

(2) Beginning with the 2022-2023 academic year, the Florida Law Enforcement Academy Scholarship Program is created to assist in the recruitment of law enforcement officers within the state by providing financial assistance to trainees who enroll in a commission-approved law enforcement officer basic recruit training program.

(3) The department shall administer the scholarship program, in consultation with the Department of Law Enforcement, according to the rules and procedures established by the State Board of Education.

(4) The scholarship shall be awarded on a first-come, first-served basis based on the date the department receives

each completed application, and is contingent upon an appropriation by the Legislature.

(5) To be eligible for the scholarship award a trainee must:

(a) Be enrolled in a commission-approved basic recruit training program at a Florida College System institution or school district technical center for the purposes of meeting the minimum qualifications under s. 943.13(9) for employment or appointment as a law enforcement officer.

(b) Not be sponsored by an employing agency that is already covering the cost of a basic recruit training program.

(6) The award to eligible trainees shall be an amount equal to any costs and fees described in this subsection which are necessary to complete the basic recruit training program, less any state financial aid received by the trainee. The award to trainees shall cover:

(a) The cost of tuition.

(b) Any applicable fees required by ss. 1009.22(3), (5), (6), and (7), and 1009.23 (3), (4), (7), (8), (10), and (11); however, any award for a nonresident trainee shall not include the out-of-state fee.

(c) Up to $1,000 for eligible expenses including:

1. The officer certification examination fee established pursuant to s. 943.1397.

2. Textbooks.

3. Uniforms.

4. Ammunition.

5. Required insurance.

6. Any other costs or fees for necessary consumable materials required to complete the basic recruit training program.

(7) The State Board of Education shall adopt rules necessary to administer this section.

Section 12. Section 1009.8961, Florida Statutes, is created to read:

1009.8961 Reimbursement for out-of-state and special operations forces law enforcement equivalency training.—

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

(a) "Commission" means the Criminal Justice Standards and Training Commission within the Department of Law Enforcement.

(b) "Department" means the Department of Education.

(c) "Employing agency" has the same meaning as provided in s. 943.10(4).

(d) "Law enforcement officer" has the same meaning as provided in s. 943.10(1).

(e) "Special operations forces" has the same meaning as provided in s. 943.10(22).

(2) Beginning with the 2022-2023 academic year, the department, in consultation with the Department of Law Enforcement, shall reimburse eligible applicants who relocate

from outside the state or who transition from service in the special operations forces to become a full-time law enforcement officer within this state for eligible expenses incurred while obtaining a Florida law enforcement officer certification.

(3) To be eligible for reimbursement under this section, an applicant's employing agency must certify that he or she:

(a) Meets the requirements of s. 943.131(2) to qualify for an exemption from the basic recruit training program.

(b) Was not sponsored by the employing agency to cover the cost of any commission required training.

(4) Reimbursement shall be awarded on a first-come, first-served basis based on the date the department received each completed application and is contingent upon an appropriation by the Legislature.

(5) Eligible applicants may be reimbursed for eligible costs and fees up to $1,000, which include any cost or fee incurred for:

(a) Any equivalency assessment administered to determine required equivalency training.

(b) Any equivalency training required by the commission.

(c) The law enforcement officer certification examination.

(6) The State Board of Education shall adopt rules necessary to administer this section.

Section 13. 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

2/28/22
Meeting Date

Senate Approps.
Committee

HB 3
Bill Number or Topic

Amendment Barcode (if applicable)

Name Alexis Laroe

Phone 601-363-1011

Address 4655 Salisbury Rd
Street

Email alaroe@sufs.org

Jax FL 32256
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: Step Up For Students

☐ 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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February 28, 2022
Meeting Date

Appropriations
Committee

HB 3
Bill Number or Topic

Amendment Barcode (if applicable)

Name Matt Puckett

Phone

Address 300 East Brevard Street
Street

Email matt@flpba.org

Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida Police Benevolent 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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2/28/2022
Meeting Date

Approps
Committee

HB 3
Bill Number or Topic

Amendment Barcode (if applicable)

Name David Struhs

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Street

Email ~~David@fo~~ David@afloridapromise.c

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:
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

2/28/2022
Meeting Date

Appropriations
Committee

3 HB 3
Bill Number or Topic

Amendment Barcode (if applicable)

Name Matt Dunagan

Phone 850-877-2165

Address 2617 Mahan Drive
Street

Email mdunagan@flsheriffs

Tallahassee FL 32312
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida 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 Appropriations

BILL:	PCS/SB 196 (518736)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development) and Senator Rodriguez
SUBJECT:	Florida Housing Finance Corporation
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	**Favorable**
2.	Hrdlicka	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	Hrdlicka	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 196 designates the Florida Housing Finance Corporation (Florida Housing) as the state fiscal agency authorized to make constitutional determinations of fiscal sufficiency in connection with their issuance of bonds. Currently, such determinations must be made by the State Board of Administration (SBA). To complement this change, the bill also removes a reference to SBA rules in the statute governing Florida Housing's Guarantee Program.

The bill amends definitions and regulations related to the qualified contract process by which Florida Housing seeks a purchaser for an affordable housing development. Additionally, the bill proscribes what happens to the affordable housing development's extended use period if a qualified contract does not close. If the reason is generally due to actions by the owner, then the extended use period continues. If contract does not close for other reasons, and Florida Housing is unable to find another purchaser within a 1-year period, then the extended use period ends.

The bill also repeals provisions that limit Elderly Housing Community Loan program loans to $750,000 per housing community and the requirements for such loans.

The bill takes effect July 1, 2022.

II. Present Situation:

The Florida Housing Finance Corporation (Florida Housing) is a public corporation created by the Legislature to assist in providing a range of affordable housing opportunities for Florida residents. Florida Housing administers federal and state resources to make loans, guarantees of loans, and to issue bonds to finance the development and preservation of affordable homeowner and rental housing and assist homebuyers with financing and down payment assistance.[1]

Florida Housing Bond Issuance

Florida Housing facilitates the issuance of bonds by serving in a conduit capacity. Each bond indenture is for a single purpose entity and the bonds are secured solely by the revenues, assets, and guarantees associated with each bond.[2] The bonds are not an obligation of the state as they are not secured by the full faith and credit of the state.[3]

Section 420.509, F.S., designates the State Board of Administration (SBA) as the state fiscal agency to make the determination required by s. 16, Art. VII of the State Constitution, in connection with the issuance of Florida Housing bonds. The required fiscal determination is that in no state fiscal year will the debt service requirements of the bonds proposed to be issued, and all other bonds secured by the same pledged revenues, exceed the pledged revenues available for such debt service requirements. This section also authorizes Florida Housing to bear interest on the bonds that are issued. However, the rate or rates may not exceed the interest rate limitation set forth in s. 215.84(3), F.S.,[4] unless authorized by the SBA.[5]

Before a bond is issued, Florida Housing's Board of Directors approves the requirements for a bond financed development at a public meeting. Upon the Board's approval, a fiscal sufficiency report is prepared by a third party and submitted to the SBA for approval. The Governor and the Florida Cabinet, functioning as the SBA Board of Trustees, must place the report on the agenda for the next scheduled SBA Board of Trustees meeting, and only upon approval by the SBA Board of Trustees can the bond transaction proceed to closing.[6] Florida Housing has stated that this mechanism can produce significant delays in bond issuance due to timing differences between the various board meetings.

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[1] See Florida Housing Finance Corporation, *Overview of Florida Housing Finance Corporation*, (July 2017) available at https://www.floridahousing.org/docs/default-source/aboutflorida/august2017/august2017/tab8.pdf, (last visited January 20, 2022). *See also* part V, ch. 420, F.S.

[2] Affordable Housing Work Group, *Overview of the State's Implementation of Rental Programs*, (August 2017) available at https://www.floridahousing.org/docs/default-source/aboutflorida/august2017/august2017/tab7.pdf (last visited January 20, 2022). Chapter 2017-71, Laws of Fla., established the Workgroup to develop recommendations to address the state's affordable housing needs.

[3] Sections 420.509 and 420.51, F.S., and s. 16, Art. VII, State Constitution.

[4] This section prescribes a statewide maximum bond interest rate, which is flexible with the bond market. The rate is computed by adding 300 basis points to The Bond Buyer "20 Bond Index" published immediately preceding the first day of the calendar month in which the bonds are sold.

[5] Section 420.509(4), F.S.

[6] Florida Housing Finance Corporation, *SB 196 Talking Points*, (November 11, 2021) on file with the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development.

Florida Affordable Housing Guarantee Program

The Florida Affordable Housing Guarantee Program was created in 1992 to work in concert with federal, state, and local government financing sources to effectively lower the overall cost of borrowing capital for the construction and rehabilitation of affordable multifamily rental housing.[7] These cost savings were achieved by the Guarantee Program guaranteeing the payment of mortgages that secure multifamily mortgage revenue bonds, thus raising the loan's rating and reducing the overall cost of borrowing. In 2009, Florida Housing's board of directors officially suspended the Guarantee Program due to continually low interest rates, which prompted developers to refinance properties outside of the Guarantee Program. Currently, just one multifamily rental property holds an outstanding guarantee from this program.[8]

State Apartment Incentive Loan (SAIL) Program

The SAIL Program is administered by Florida Housing and provides low-interest loans on a competitive basis to multifamily affordable housing developers.[9] These funds often serve to bridge the gap between the development's primary financing and the total cost of the development. SAIL dollars are available for developers proposing to construct or substantially rehabilitate multifamily rental housing.[10]

Elderly Housing Community Loan (EHCL) Program

During the first six months of funding availability each year, program funds are made available for developers who provide set-asides for certain tenant groups. Included among these are elderly persons. The EHCL program offers up to $750,000 in loans to make substantial life, safety, or security related improvements to existing affordable rental housing for the elderly. Unused funds designated for EHCL return to the SAIL program.[11]

Loans made through this program must meet several statutory requirements. Recipients must commit to matching at least 5% of the loan amount and have the primary mortgagee review and approve the developer's application for this loan. The Florida Housing establishes the interest rate, which may not exceed 3 percent, and the loan term, which may not exceed 15 years[12] and is based on a credit analysis of the applicant. The corporation may forgive indebtedness for a share of the loan attributable to the units in a project reserved for extremely-low-income elderly by nonprofit organizations where the project has provided affordable housing to the elderly for 15 years or more. A nonprofit organization or sponsor may not use the proceeds of the loan to pay for administrative costs, routine maintenance, or new construction.

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[7] Section 420.5092, F.S.
[8] Florida Housing Finance Corporation, 2020 Annual Report, p. 19, available at https://www.floridahousing.org/data-docs-reports/annual-reports (last visited January 20, 2022).
[9] Section 420.5087, F.S.
[10] See Florida Housing Finance Corporation, *State Apartment Incentive Loan*, available at https://floridahousing.org/programs/developers-multifamily-programs/state-apartment-incentive-loan (last visited February 3, 2022).
[11] Section 420.5087(3)(e), F.S.
[12] Unless the Florida Housing's lien under the loan would be subordinate to another mortgage lien, in which case the term may be the same as the longest term of the superior lien.

Qualified Contract Process

Of the affordable housing financing options provided by the federal government, Low Income Housing Tax Credits (LIHTC)[13] are among the most commonly used. When a property is financed using LIHTC the federal government typically requires the property be utilized for affordable housing for at least 30 years.[14] This time period is divided into the first 15 years, the "initial compliance period," and the rest, an "extended use period."

After 14 years the owner of an affordable housing development may request that the Florida Housing seek a purchaser who will continue to operate the affordable portions of the development as affordable housing – this is referred to as the "qualified contract process." Many developments, particularly those that receive the most lucrative LIHTC, waive the right to enter this process when contracting with the Florida Housing for the credits and must remain affordable housing for the duration of the agreed upon time. After a developer requests a qualified contract, if the Florida Housing is unable to present a buyer during the subsequent 1-year period, the extended use period of the property as affordable housing will end and the property can be utilized for market-rate housing.[15]

This "qualified contract process" relies on the Florida Housing marketing the property and returning to the owner with a "bona fide contract," showing that the Florida Housing has found a buyer in order to maintain the affordable housing requirement. The "bona fide contract" is an offer to purchase an affordable housing development for a price equal to or exceeding the qualified contract amount (or purchase price) that is made by a purchaser with the intent that the offer will result in the execution of a valid and binding contract.[16] The price for the affordable housing portion of the sale is set according to a formula designed to give the owner an inflation-adjusted return on its original equity contribution.[17] This calculation may result in a price that exceeds the market price of the development as affordable housing.

The bona fide contract, as provided by Florida administrative rule is, a contract for sale that:[18]

- Is signed by the purchaser;
- Provides that the acceptance of the contract is contingent upon approval by the Florida Housing;
- Requires an initial earnest money deposit from the purchaser of $50,000 to be made with an escrow agent; and

[13] Low Income Housing Tax Credits are provided by the federal government to rental housing developers in exchange for a commitment to provide affordable rents and are usually sold to investors to raise project equity. The LIHTC program is governed by the U.S. Department of Treasury and Florida's allocation is administered by the Florida Housing. Under the LIHTC program, successful applicants are provided with a dollar-for-dollar reduction in federal tax liability in exchange for the development or rehabilitation of units to be occupied by very low- and low-income households. *See* Florida Housing Finance Corporation, *Housing Credits*, available at https://www.floridahousing.org/programs/developers-multifamily-programs/low-income-housing-tax-credits (last visited February 3, 2022).
[14] Internal Revenue Code Section 42(h)(6)(A).
[15] 26 U.S.C. 42(h)(6)(E)(i)(II).
[16] Fla. Admin. Code R. 67-48.031(3).
[17] 26 U.S.C. 42(h)(6)(F).
[18] Fla. Admin. Code R. 67-48.031(3).

- Obligates the purchaser to make a second earnest money deposit equal to 3 percent of the qualified contract price to be deposited within 15 business days of the end of the due diligence period.

The initial and second earnest money deposits are not refundable unless the seller fails to deliver insurable title or defaults. A contract that meets these terms is deemed a qualified contract and the Florida Housing is deemed to have met its responsibility to present the owner with a qualified contract.[19]

If the Florida Housing is able to procure a purchaser and present the owner with such a bona fide contract within the 1-year period, regardless of whether the owner accepts, rejects, or fails to act upon the contract, the property will continue to be subject to its extended use agreement as affordable housing. If the owner accepts the offer, the property will be sold to the purchaser. If the owner rejects the offer or fails to act upon the offer, the owner will continue to be subject to the extended use agreement and cannot submit another qualified contract request for the development.[20]

III. Effect of Proposed Changes:

Qualified Contract Process

The bill changes the process for qualified contracts for affordable housing projects.

Section 1 amends s. 420.503, F.S., to define the terms "bona fide contract" and "qualified contract". These definitions exist currently only in administrative rule.

Generally under current law, the "bona fide contact" is an agreement to negotiate the purchase of a development. The bill changes this administrative definition to mean "a complete and negotiated commercial reasonable contract for sale." Final acceptance of the contract is contingent upon:

- Being signed by the purchaser *and the seller*;
- Requiring an initial, *nonrefundable* earnest money deposit from the purchaser of $50,000 to be made with an escrow agent, *unless waived by the seller*; and
- Obligating the purchaser to make a second, *nonrefundable* earnest money deposit equal to 3 percent of the qualified contract price to be deposited within 15 business days of the end of the due diligence period, *unless waived by the seller and subject to rights reserved by the purchaser in the event of seller failure to deliver insurable title or default*.

Under the bill, similar to the administrative rule, the initial and second earnest money deposits are nonrefundable. However, under the bill the bona fide contract can include a provision that allows the initial and second earnest money deposits to be refundable:

- If the seller fails to deliver insurable title at closing;

[19] Fla. Admin. Code R. 67-48.031.
[20] Fla. Admin. Code R. 67-48.031(11).

- If the seller terminates a fully executed contract due to a reason other than default of the purchaser (it is unclear if the "fully executed contract" refers to the bona fide contract or another contract, like the qualified contract discussed below);
- As provided in the contract; or
- If the owner defaults.

Currently an owner/seller must accept a bona fide contract that meets certain requirements; under the bill, an owner would not be obligated to accept a bona fide contract presented by the Florida Housing. The changes from current administrative definitions also allow the waiver of the requirements to place the initial and second earnest money deposits in escrow and allow such deposits to be refunded for additional reasons.

The bill defines "qualified contract" has having "the same meaning as in 26 U.S.C. s. 42(h)(6)(F) in effect on the date of the preliminary determination certificate for the low-income housing tax credits for the development that is the subject of the qualified contract request." The definition requires the Florida Housing to deem a bona fide contract to be a qualified contract at the time the second earnest money deposit is deposited in escrow in accordance with the terms of the bona fide contract and, in such event, the Florida Housing is deemed to have fulfilled its responsibility to present the owner with a qualified contract.

Section 4 amends s. 420.5099, F.S., related to allocation of low-income housing tax credits, to determine what happens to the extended use agreement, that is the affordability period, in the event that a qualified contract does not close.

Under the bill, if a qualified contract fails to close due to (1) a default of the owner, (2) the termination by the owner due to a reason other than the purchaser's default, or (3) as otherwise provided for in the bona fide contract, then the development must remain subject to the extended use agreement and the owner is considered to have waived all rights to a qualified contract request. If a qualified contract fails to close for any other reason, the qualified contract process continues and the Florida Housing must continue to seek valid offers through the 1-year period. If no other qualified contract is presented to the owner during the 1-year period, the project must be treated as if no qualified contract had been presented, and the extended use period is terminated. In effect, this would end the affordability of the housing and allow the units to be provided at market rate.

Section 6 amends s. 420.628, F.S., to correct a cross reference.

Elderly Housing Community Loan Program

Section 2 amends s. 420.5078(5)(e), F.S., to repeal the requirements for these loans. The bill preserves the requirement that a certain amount of money be set aside for loans related to building preservation, health, life safety, and sanitation repairs and improvements, but removes statutory guidelines for the terms and requirements related to those loans.

Bond Issuance

Section 3 amends s. 420.509, F.S., to designate Florida Housing as the state fiscal agency to make the determination required by s. 16, Art. VII of the State Constitution, in connection with the issuance of Florida Housing bonds and removes the authority of the SBA to authorize an interest rate in excess of the maximum.

The section also allows, where applicable, Florida Housing to use the interest rate limitation on bond issuance set forth in ss. 159.825 or 215.84, F.S., as applicable. This change allows Florida Housing to bear higher interest on taxable bonds without seeking SBA approval.

Section 5 amends s. 420.5092, F.S., to remove the requirement for the Florida Housing Guarantee Program, now suspended, that the program's fund's financial rating remain consistent with rules adopted by the SBA. This is a technical change to conform to the bill's removal of the SBA from oversight responsibility.

Effective Date

Section 7 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:

The bill defines "qualified contract" to mean the same as in federal law "in effect on the date of the preliminary determination certificate…" Generally, the legislature may not delegate its power to another branch of government, including the federal government.[21] "Where a statute generally incorporates a federal law or regulation, to avoid holding the subject statute unconstitutional, Florida courts interpret the statute as incorporating only

[21] *See* s. 3, Art. II, Florida Constitution.

the federal law in effect on the date of adoption of the Florida Statute."[22] It is unknown what changes, if any, that Congress may make to the federal law cited in the bill.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The effect of repealing the requirements for the EHCL program is unclear because it is unknown what administrative rules the Florida Housing will adopt, if it changes existing rules based on the current law. By repealing the limit on the amount of the loan, it is possible that larger loans could be made leading to more repairs for this type of housing; however the size of the loans may in turn limit the number of developments that can be repaired in any given yet. The effect on the repair and improvement of current developments with set-asides for the elderly is unknown.

The change of the definitions and application of the bona fide contract and the qualified contract may benefit owners of affordable housing developments that are at their 14-year periods of affordability. The provisions may make it easier for the owner to divest itself of an affordable housing development. This may limit the amount of affordable housing units available in the future.

C. Government Sector Impact:

According to the Florida Housing, the current multi-layer review process can cause unpredictable delays and subject transactions to market volatility. This bill would ameliorate that concern and positively impact Florida Housing's ability to reliably issue bonds.[23]

The changes in the bill to the bona fide contract and qualified contract process may result in more owners entering the process, requiring Florida Housing to incur additional administrative costs in order to find purchasers and eligible offers.

VI. Technical Deficiencies:

None.

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[22] *Abbott Lab'ys v. Mylan Pharms., Inc.*, 15 So. 3d 642, 655 (Fla. Dist. Ct. App. 2009). "…the Legislature may adopt provisions of federal statutes and administrative rules made by a federal administrative body, 'that are in existence and in effect at the time the legislature acts, but it would be an unconstitutional delegation of legislative power for the legislature to adopt in advance any federal act or the ruling of any federal administrative body that Congress or such administrative body might see fit to adopt in the future.'" *Freimuth v. State*, 272 So. 2d 473, 476 (Fla. 1972)

[23] Florida Housing Finance Corporation, *SB 196 Talking Points*, (November 11, 2021) on file with the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development.

VII. Related Issues:

The definition of "qualified contract" requires Florida Housing to deem a bona fide contract to be a qualified contract at the time the second earnest money deposit is deposited in escrow in accordance with the terms of the bona fide contract. However, the bill appears to create a conflict with the definition of "bona fide contract" which allows the waiver of the earnest money deposits. If the deposit is waived, then it is unclear when the Florida Housing must deem a bona fide contract to be a qualified contract.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 420.509 and 420.5092.

IX. Additional Information:

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

PCS (518736) by Appropriations Committee (Recommended CS by Appropriations Subcommittee on Transportation, Tourism and Economic Development):
The proposed committee substitute repeals provisions that limit Elderly Housing Community Loan Program loans to $750,000 per housing community and the provisions related to how such loans can be made. .

The committee substitute also amends definitions and regulations related to the qualified contract process, by which the Florida Housing seeks a purchaser for an affordable housing development. The changes affect when such a contract is entered and the operation of deposits related to the purchase.

B. Amendments:

None.

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

395542

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2022	.	
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The Committee on Appropriations (Rodriguez) recommended the following:

Senate Amendment

Delete lines 46 - 77
and insert:
(4) "Bona fide contract" means a certain and unambiguous offer to purchase the development for an amount equaling or exceeding the qualified contract purchase price which is made in good faith by a qualified purchaser with the intent that such

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offer result in the execution of an enforceable, valid, and binding contract to purchase and which includes:

(a) A requirement for the purchaser to make an initial nonrefundable earnest money deposit of at least $50,000, to be placed in escrow, unless waived in writing by the owner; and

(b) A requirement for the purchaser to make a second nonrefundable earnest money deposit equal to 3 percent of the qualified contract price within 15 business days after the end of the due diligence period, unless waived in writing by the owner and subject to any rights reserved by the purchaser in the event of the owner's failure to deliver insurable title or in the event of the owner's default.

A bona fide contract may require that the initial earnest money deposit and the second earnest money deposit be refundable in the event of the owner's failure to deliver insurable title at closing; the owner's termination of a fully executed contract due to a reason other than the default of the purchaser, or as may be provided for in the contract; or the owner's default.

(16) ~~(15)~~ "Elderly" means persons 62 years of age or older; however, this definition does not prohibit housing from being deemed housing for the elderly as defined in subsection (21) ~~(20)~~ if such housing otherwise meets the requirements of subsection (21) ~~(20)~~.

(36) "Qualified contract" has the same meaning as in 26 U.S.C. s. 42(h)(6)(F) in effect on the date of the preliminary determination certificate for the low-income housing tax credits for the development that is the subject of the qualified contract request, unless the Internal Revenue Code requires a

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different statute or regulation to apply to the development. The corporation shall deem a bona fide

151346

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/01/2022	.	
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The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 192 and 193
insert:

Section 5. Present paragraphs (d) through (n) of subsection (5) of section 420.9075, Florida Statutes, are redesignated as paragraphs (e) through (o), respectively, a new paragraph (d) is added to that subsection, and paragraphs (a), (b), and (c) and present paragraph (n) of that subsection are amended, to read:

420.9075 Local housing assistance plans; partnerships.—



(5) The following criteria apply to awards made to eligible sponsors or eligible persons for the purpose of providing eligible housing:

(a) A percentage ~~At least 65 percent~~ of the funds made available in each county and eligible municipality from the local housing distribution must be reserved for home ownership for eligible persons.

(b) A percentage ~~Up to 25 percent~~ of the funds made available in each county and eligible municipality from the local housing distribution may be reserved for rental housing for eligible persons or for the purposes enumerated in s. 420.9072(7)(b).

(c) A percentage ~~At least 75 percent~~ of the funds made available in each county and eligible municipality from the local housing distribution must be reserved for construction, rehabilitation, or emergency repair of affordable, eligible housing.

(d) Beginning July 1, 2023, the corporation shall set the percentages in paragraphs (a), (b), and (c) based on the housing policy recommendations and best practices developed by the Shimberg Center for Affordable Housing pursuant to s. 420.6075(3)(c). The corporation shall reevaluate the percentages and adjust as necessary.

(o) ~~(n)~~ Funds from the local housing distribution not used to meet the criteria established in paragraph (a) or paragraph (c) or not used for the administration of a local housing assistance plan must be used for housing production and finance activities, including, but not limited to, financing preconstruction activities or the purchase of existing units,



providing rental housing, and providing home ownership training to prospective home buyers and owners of homes assisted through the local housing assistance plan.

1. Notwithstanding the provisions of paragraphs (a) and (c), program income as defined in s. 420.9071(26) may also be used to fund activities described in this paragraph.

2. When preconstruction due-diligence activities conducted as part of a preservation strategy show that preservation of the units is not feasible and will not result in the production of an eligible unit, such costs shall be deemed a program expense rather than an administrative expense if such program expenses do not exceed 3 percent of the annual local housing distribution.

3. If both an award under the local housing assistance plan and federal low-income housing tax credits are used to assist a project and there is a conflict between the criteria prescribed in this subsection and the requirements of s. 42 of the Internal Revenue Code of 1986, as amended, the county or eligible municipality may resolve the conflict by giving precedence to the requirements of s. 42 of the Internal Revenue Code of 1986, as amended, in lieu of following the criteria prescribed in this subsection with the exception of paragraphs (a) and (h) ~~(g) of this subsection~~.

4. Each county and each eligible municipality may award funds as a grant for construction, rehabilitation, or repair as part of disaster recovery or emergency repairs or to remedy accessibility or health and safety deficiencies. Any other grants must be approved as part of the local housing assistance plan.

151346

Section 6. Subsection (27) of section 420.9071, Florida Statutes, is amended to read:

420.9071 Definitions.—As used in ss. 420.907-420.9079, the term:

(27) "Recaptured funds" means funds that are recouped by a county or eligible municipality in accordance with the recapture provisions of its local housing assistance plan pursuant to s. 420.9075(5)(k) ~~s. 420.9075(5)(j)~~ from eligible persons or eligible sponsors, which funds were not used for assistance to an eligible household for an eligible activity, when there is a default on the terms of a grant award or loan award.

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

And the title is amended as follows:

Delete line 32

and insert:

within a certain period; amending s. 420.9075, F.S.; revising certain criteria for the reservation of State Housing Initiatives Partnership Program funds; requiring the corporation to set percentages of certain reserved funds based on recommendations and best practices developed by the Shimberg Center for Affordable Housing at the University of Florida; requiring the corporation to reevaluate and adjust the percentages as necessary; amending s. 420.9071, F.S.; conforming a cross-reference; amending s. 420.5092, F.S.;

193088

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/01/2022	.	
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The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 192 and 193
insert:

Section 5. Paragraph (c) is added to subsection (3) of section 420.6075, Florida Statutes, to read:

420.6075 Research and planning for affordable housing; annual housing report.—

(3) The Shimberg Center for Affordable Housing shall:

(c) Research national housing policies and develop policy

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recommendations and best practices for housing in both urban and rural communities in this state. By December 21, 2022, and annually thereafter, the center shall submit a report on its policy recommendations and best practices to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the corporation and post the report on the center's website. The corporation shall annually distribute $2 million of its appropriation from the State Housing Trust Fund to the center for the purpose of administering this paragraph.

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

And the title is amended as follows:

Delete line 32

and insert:

within a certain period; amending s. 420.6075, F.S.; requiring the Shimberg Center for Affordable Housing at the University of Florida to research national housing policies and develop policy recommendations and best practices for housing; requiring the center to annually submit reports to the Legislature and the corporation and post the reports on its website; requiring the corporation to annually distribute a specified amount from the State Housing Trust Fund to the center; amending s. 420.5092, F.S.;

518736

576-02675-22

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Transportation, Tourism, and Economic Development)

A bill to be entitled

An act relating to the Florida Housing Finance Corporation; amending s. 420.503, F.S.; defining the terms "bona fide contract" and "qualified contract" for purposes of the Florida Housing Finance Corporation Act; amending s. 420.5087, F.S.; deleting certain limitations and restrictions on, and requirements for, loans made by the corporation to sponsors of housing for the elderly under the State Apartment Incentive Loan Program; deleting the authority of the corporation to forgive certain indebtedness; deleting provisions relating to loan applications; amending s. 420.509, F.S.; designating the corporation, rather than the State Board of Administration, as the state fiscal agency to make determinations in connection with specified bonds; authorizing the corporation's board of directors, rather than the State Board of Administration, to delegate to its executive director the authority and power to perform that function; requiring the executive director to annually report specified information to the board of directors, rather than the State Board of Administration; revising applicable interest rate limitations on bonds of the corporation; amending s. 420.5099, F.S.; providing construction relating to low-income tax credit developments if a

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qualified contract does not close for specified reasons; providing requirements for the corporation and an owner if a qualified contract does not close for any other reason; providing construction if no other qualified contract is presented to the owner within a certain period; amending s. 420.5092, F.S.; conforming a provision to changes made by the act; amending s. 420.628, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Present subsections (4) through (34) and (35) through (43) of section 420.503, Florida Statutes, are redesignated as subsections (5) through (35) and (37) through (45), respectively, new subsections (4) and (36) are added to that section, and present subsection (15) of that section is amended, to read:

420.503 Definitions.—As used in this part, the term:

(4) "Bona fide contract" means a complete and negotiated commercially reasonable contract for sale signed by the owner and the purchaser which states that final acceptance of the contract is contingent upon approval by the corporation and which includes:

(a) A requirement for the purchaser to make an initial nonrefundable earnest money deposit of at least $50,000, to be placed in escrow, unless waived in writing by the owner; and

(b) A requirement for the purchaser to make a second nonrefundable earnest money deposit equal to 3 percent of the

qualified contract price within 15 business days after the end of the due diligence period, unless waived in writing by the owner and subject to any rights reserved by the purchaser in the event of the owner's failure to deliver insurable title or in the event of the owner's default.

A bona fide contract may require that the initial earnest money deposit and the second earnest money deposit be refundable in the event of the owner's failure to deliver insurable title at closing; the owner's termination of a fully executed contract due to a reason other than the default of the purchaser, or as may be provided for in the contract; or the owner's default.

(16)~~(15)~~ "Elderly" means persons 62 years of age or older; however, this definition does not prohibit housing from being deemed housing for the elderly as defined in subsection (21) ~~(20)~~ if such housing otherwise meets the requirements of subsection (21) ~~(20)~~.

(36) "Qualified contract" has the same meaning as in 26 U.S.C. s. 42(h)(6)(F) in effect on the date of the preliminary determination certificate for the low-income housing tax credits for the development that is the subject of the qualified contract request. The corporation shall deem a bona fide contract to be a qualified contract at the time the second earnest money deposit is deposited in escrow in accordance with the terms of the bona fide contract and, in such event, the corporation is deemed to have fulfilled its responsibility to present the owner with a qualified contract.

Section 2. Subsection (3) of section 420.5087, Florida Statutes, is amended to read:

420.5087 State Apartment Incentive Loan Program.—There is hereby created the State Apartment Incentive Loan Program for the purpose of providing first, second, or other subordinated mortgage loans or loan guarantees to sponsors, including for-profit, nonprofit, and public entities, to provide housing affordable to very-low-income persons.

(3) During the first 6 months of loan or loan guarantee availability, program funds shall be made available for use by sponsors who provide the housing set-aside required in subsection (2) for the tenant groups designated in this subsection. The funds made available to each of these groups shall be determined using the most recent statewide very-low-income rental housing market study available at the time of publication of each notice of fund availability required by paragraph (6)(b). The funds made available within each notice of fund availability to the tenant groups in paragraphs (b)-(e) may not be less than 10 percent of the funds available at that time. Any increase in funding required to reach the required minimum must be taken from the tenant group that would receive the largest percentage of available funds in accordance with the study. The funds made available within each notice of fund availability to the tenant group in paragraph (a) may not be less than 5 percent of the funds available at that time. The tenant groups are:

(a) Commercial fishing workers and farmworkers;

(b) Families;

(c) Persons who are homeless;

(d) Persons with special needs; and

(e) Elderly persons. Ten percent of the amount made

available for the elderly shall provide loans to sponsors of housing for the elderly for the purpose of making building preservation, health, or sanitation repairs or improvements which are required by federal, state, or local regulation or code, or lifesafety or security-related repairs or improvements to such housing. ~~Such a loan may not exceed $750,000 per housing community for the elderly. In order to receive the loan, the sponsor of the housing community must make a commitment to match at least 5 percent of the loan amount to pay the cost of such repair or improvement. The corporation shall establish the rate of interest on the loan, which may not exceed 3 percent, and the term of the loan, which may not exceed 15 years; however, if the lien of the corporation's encumbrance is subordinate to the lien of another mortgagee, then the term may be made coterminous with the longest term of the superior lien. The term of the loan shall be based on a credit analysis of the applicant. The corporation may forgive indebtedness for a share of the loan attributable to the units in a project reserved for extremely-low-income elderly by nonprofit organizations, as defined in s. 420.0004(5), where the project has provided affordable housing to the elderly for 15 years or more. The corporation shall establish, by rule, the procedure and criteria for receiving, evaluating, and competitively ranking all applications for loans under this paragraph. A loan application must include evidence of the first mortgagee's having reviewed and approved the sponsor's intent to apply for a loan. A nonprofit organization or sponsor may not use the proceeds of the loan to pay for administrative costs, routine maintenance, or new construction.~~

Section 3. Subsections (2) and (4) of section 420.509,

Florida Statutes, are amended to read:

420.509 Revenue bonds.—

(2) The corporation ~~State Board of Administration~~ is designated as the state fiscal agency to make the determinations required by s. 16, Art. VII of the State Constitution in connection with the issuance of such bonds that in no state fiscal year will the debt service requirements of the bonds proposed to be issued and all other bonds secured by the same pledged revenues exceed the pledged revenues available for such debt service requirements. The corporation's board of directors ~~State Board of Administration~~ may delegate to its executive director the authority and power to perform that function ~~without further review of the agency~~. The determinations pursuant to this subsection ~~paragraph~~ are limited to a review of the matters essential to making the determinations required by s. 16, Art. VII of the State Constitution. The executive director shall report annually to the board ~~State Board of Administration~~ and the Legislature regarding the number of bond issues considered and the determination with respect thereto.

(4) Bonds of the corporation may:

(a) Bear interest at a rate or rates not exceeding the interest rate limitation set forth in s. 159.825 or s. 215.84, as applicable ~~s. 215.84(3), unless the State Board of Administration authorizes an interest rate in excess of such maximum~~;

(b) Have such provisions for payment at maturity and redemption before maturity at such time or times and at such price or prices; and

(c) Be payable at such place or places within or without



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the state as the board determines by resolution.

Section 4. Present subsection (7) of section 420.5099, Florida Statutes, is redesignated as subsection (8), and a new subsection (7) is added to that section, to read:

420.5099 Allocation of the low-income housing tax credit.—

(7) For the further purpose of implementing this program in this state, if a qualified contract does not close due to a default of the owner, the termination by the owner due to a reason other than the purchaser's default, or as otherwise provided for in the bona fide contract, the development must remain subject to the extended use agreement, and the owner is deemed to have waived any right or option to submit another qualified contract request for the development. If a qualified contract does not close for any other reason, the corporation must continue to seek offers at the qualified contract price through the end of the 1-year period, and the owner's obligation to cooperate in the marketing of the project must continue. If no other qualified contract is presented to the owner during the 1-year period, the project must be treated as if no qualified contract had been presented, and the extended use period is terminated.

Section 5. Paragraph (b) of subsection (6) of section 420.5092, Florida Statutes, is amended to read:

420.5092 Florida Affordable Housing Guarantee Program.—

(6)

(b) If the claims payment obligations under affordable housing guarantees from amounts on deposit in the guarantee fund would cause the claims paying rating assigned to the guarantee fund to be less than the third-highest rating classification of



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any nationally recognized rating service, which classifications being consistent with s. 215.84(3) ~~and rules adopted thereto by the State Board of Administration~~, the corporation shall certify to the Chief Financial Officer the amount of such claims payment obligations. Upon receipt of such certification, the Chief Financial Officer shall transfer to the guarantee fund, from the first available taxes distributed to the State Housing Trust Fund pursuant to s. 201.15(4)(c) and (d) during the ensuing state fiscal year, the amount certified as necessary to meet such obligations, such transfer to be subordinate to any transfer referenced in paragraph (a) and not to exceed 50 percent of the amounts distributed to the State Housing Trust Fund pursuant to s. 201.15(4)(c) and (d) during the preceding state fiscal year.

Section 6. Subsection (2) of section 420.628, Florida Statutes, is amended to read:

420.628 Affordable housing for children and young adults leaving foster care; legislative findings and intent.—

(2) Young adults who leave the child welfare system meet the definition of eligible persons under ss. 420.503(18) and 420.9071(11) ~~ss. 420.503(17) and 420.9071(11)~~ for affordable housing, and are encouraged to participate in federal, state, and local affordable housing programs. Students deemed to be eligible occupants under 26 U.S.C. s. 42(i)(3)(D) shall be considered eligible persons for purposes of all projects funded under this chapter.

Section 7. This act shall take effect July 1, 2022.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 196
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development) and Senator Rodriguez
SUBJECT:	Florida Housing Finance Corporation
DATE:	March 2, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	**Favorable**
2.	Hrdlicka	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	Hrdlicka	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 196 designates the Florida Housing Finance Corporation (Florida Housing) as the state fiscal agency authorized to make constitutional determinations of fiscal sufficiency in connection with their issuance of bonds. Currently, such determinations must be made by the State Board of Administration (SBA). To complement this change, the bill also removes a reference to SBA rules in the statute governing Florida Housing's Guarantee Program.

The bill amends definitions and regulations related to the qualified contract process by which Florida Housing seeks a purchaser for an affordable housing development. Additionally, the bill proscribes what happens to the affordable housing development's extended use period if a qualified contract does not close. If the reason is generally due to actions by the owner, then the extended use period continues. If contract does not close for other reasons, and Florida Housing is unable to find another purchaser within a 1-year period, then the extended use period ends.

The bill also repeals provisions that limit Elderly Housing Community Loan program loans to $750,000 per housing community and the requirements for such loans.

The bill takes effect July 1, 2022.

II. Present Situation:

The Florida Housing Finance Corporation (Florida Housing) is a public corporation created by the Legislature to assist in providing a range of affordable housing opportunities for Florida residents. Florida Housing administers federal and state resources to make loans, guarantees of loans, and to issue bonds to finance the development and preservation of affordable homeowner and rental housing and assist homebuyers with financing and down payment assistance.[1]

Florida Housing Bond Issuance

Florida Housing facilitates the issuance of bonds by serving in a conduit capacity. Each bond indenture is for a single purpose entity and the bonds are secured solely by the revenues, assets, and guarantees associated with each bond.[2] The bonds are not an obligation of the state as they are not secured by the full faith and credit of the state.[3]

Section 420.509, F.S., designates the State Board of Administration (SBA) as the state fiscal agency to make the determination required by s. 16, Art. VII of the State Constitution, in connection with the issuance of Florida Housing bonds. The required fiscal determination is that in no state fiscal year will the debt service requirements of the bonds proposed to be issued, and all other bonds secured by the same pledged revenues, exceed the pledged revenues available for such debt service requirements. This section also authorizes Florida Housing to bear interest on the bonds that are issued. However, the rate or rates may not exceed the interest rate limitation set forth in s. 215.84(3), F.S.,[4] unless authorized by the SBA.[5]

Before a bond is issued, Florida Housing's Board of Directors approves the requirements for a bond financed development at a public meeting. Upon the Board's approval, a fiscal sufficiency report is prepared by a third party and submitted to the SBA for approval. The Governor and the Florida Cabinet, functioning as the SBA Board of Trustees, must place the report on the agenda for the next scheduled SBA Board of Trustees meeting, and only upon approval by the SBA Board of Trustees can the bond transaction proceed to closing.[6] Florida Housing has stated that this mechanism can produce significant delays in bond issuance due to timing differences between the various board meetings.

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[1] See Florida Housing Finance Corporation, *Overview of Florida Housing Finance Corporation*, (July 2017) available at https://www.floridahousing.org/docs/default-source/aboutflorida/august2017/august2017/tab8.pdf, (last visited January 20, 2022). *See also* part V, ch. 420, F.S.

[2] Affordable Housing Work Group, *Overview of the State's Implementation of Rental Programs*, (August 2017) available at https://www.floridahousing.org/docs/default-source/aboutflorida/august2017/august2017/tab7.pdf (last visited January 20, 2022). Chapter 2017-71, Laws of Fla., established the Workgroup to develop recommendations to address the state's affordable housing needs.

[3] Sections 420.509 and 420.51, F.S., and s. 16, Art. VII, State Constitution.

[4] This section prescribes a statewide maximum bond interest rate, which is flexible with the bond market. The rate is computed by adding 300 basis points to The Bond Buyer "20 Bond Index" published immediately preceding the first day of the calendar month in which the bonds are sold.

[5] Section 420.509(4), F.S.

[6] Florida Housing Finance Corporation, *SB 196 Talking Points*, (November 11, 2021) on file with the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development.

Florida Affordable Housing Guarantee Program

The Florida Affordable Housing Guarantee Program was created in 1992 to work in concert with federal, state, and local government financing sources to effectively lower the overall cost of borrowing capital for the construction and rehabilitation of affordable multifamily rental housing.[7] These cost savings were achieved by the Guarantee Program guaranteeing the payment of mortgages that secure multifamily mortgage revenue bonds, thus raising the loan's rating and reducing the overall cost of borrowing. In 2009, Florida Housing's board of directors officially suspended the Guarantee Program due to continually low interest rates, which prompted developers to refinance properties outside of the Guarantee Program. Currently, just one multifamily rental property holds an outstanding guarantee from this program.[8]

State Apartment Incentive Loan (SAIL) Program

The SAIL Program is administered by Florida Housing and provides low-interest loans on a competitive basis to multifamily affordable housing developers.[9] These funds often serve to bridge the gap between the development's primary financing and the total cost of the development. SAIL dollars are available for developers proposing to construct or substantially rehabilitate multifamily rental housing.[10]

Elderly Housing Community Loan (EHCL) Program

During the first six months of funding availability each year, program funds are made available for developers who provide set-asides for certain tenant groups. Included among these are elderly persons. The EHCL program offers up to $750,000 in loans to make substantial life, safety, or security related improvements to existing affordable rental housing for the elderly. Unused funds designated for EHCL return to the SAIL program.[11]

Loans made through this program must meet several statutory requirements. Recipients must commit to matching at least 5% of the loan amount and have the primary mortgagee review and approve the developer's application for this loan. The Florida Housing establishes the interest rate, which may not exceed 3 percent, and the loan term, which may not exceed 15 years[12] and is based on a credit analysis of the applicant. The corporation may forgive indebtedness for a share of the loan attributable to the units in a project reserved for extremely-low-income elderly by nonprofit organizations where the project has provided affordable housing to the elderly for 15 years or more. A nonprofit organization or sponsor may not use the proceeds of the loan to pay for administrative costs, routine maintenance, or new construction.

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[7] Section 420.5092, F.S.
[8] Florida Housing Finance Corporation, 2020 Annual Report, p. 19, available at https://www.floridahousing.org/data-docs-reports/annual-reports (last visited January 20, 2022).
[9] Section 420.5087, F.S.
[10] See Florida Housing Finance Corporation, *State Apartment Incentive Loan*, available at https://floridahousing.org/programs/developers-multifamily-programs/state-apartment-incentive-loan (last visited February 3, 2022).
[11] Section 420.5087(3)(e), F.S.
[12] Unless the Florida Housing's lien under the loan would be subordinate to another mortgage lien, in which case the term may be the same as the longest term of the superior lien.

Qualified Contract Process

Of the affordable housing financing options provided by the federal government, Low Income Housing Tax Credits (LIHTC)[13] are among the most commonly used. When a property is financed using LIHTC the federal government typically requires the property be utilized for affordable housing for at least 30 years.[14] This time period is divided into the first 15 years, the "initial compliance period," and the rest, an "extended use period."

After 14 years the owner of an affordable housing development may request that the Florida Housing seek a purchaser who will continue to operate the affordable portions of the development as affordable housing – this is referred to as the "qualified contract process." Many developments, particularly those that receive the most lucrative LIHTC, waive the right to enter this process when contracting with the Florida Housing for the credits and must remain affordable housing for the duration of the agreed upon time. After a developer requests a qualified contract, if the Florida Housing is unable to present a buyer during the subsequent 1-year period, the extended use period of the property as affordable housing will end and the property can be utilized for market-rate housing.[15]

This "qualified contract process" relies on the Florida Housing marketing the property and returning to the owner with a "bona fide contract," showing that the Florida Housing has found a buyer in order to maintain the affordable housing requirement. The "bona fide contract" is an offer to purchase an affordable housing development for a price equal to or exceeding the qualified contract amount (or purchase price) that is made by a purchaser with the intent that the offer will result in the execution of a valid and binding contract.[16] The price for the affordable housing portion of the sale is set according to a formula designed to give the owner an inflation-adjusted return on its original equity contribution.[17] This calculation may result in a price that exceeds the market price of the development as affordable housing.

The bona fide contract, as provided by Florida administrative rule is, a contract for sale that:[18]

- Is signed by the purchaser;
- Provides that the acceptance of the contract is contingent upon approval by the Florida Housing;
- Requires an initial earnest money deposit from the purchaser of $50,000 to be made with an escrow agent; and

[13] Low Income Housing Tax Credits are provided by the federal government to rental housing developers in exchange for a commitment to provide affordable rents and are usually sold to investors to raise project equity. The LIHTC program is governed by the U.S. Department of Treasury and Florida's allocation is administered by the Florida Housing. Under the LIHTC program, successful applicants are provided with a dollar-for-dollar reduction in federal tax liability in exchange for the development or rehabilitation of units to be occupied by very low- and low-income households. *See* Florida Housing Finance Corporation, *Housing Credits*, available at https://www.floridahousing.org/programs/developers-multifamily-programs/low-income-housing-tax-credits (last visited February 3, 2022).
[14] Internal Revenue Code Section 42(h)(6)(A).
[15] 26 U.S.C. 42(h)(6)(E)(i)(II).
[16] Fla. Admin. Code R. 67-48.031(3).
[17] 26 U.S.C. 42(h)(6)(F).
[18] Fla. Admin. Code R. 67-48.031(3).

- Obligates the purchaser to make a second earnest money deposit equal to 3 percent of the qualified contract price to be deposited within 15 business days of the end of the due diligence period.

The initial and second earnest money deposits are not refundable unless the seller fails to deliver insurable title or defaults. A contract that meets these terms is deemed a qualified contract and the Florida Housing is deemed to have met its responsibility to present the owner with a qualified contract.[19]

If the Florida Housing is able to procure a purchaser and present the owner with such a bona fide contract within the 1-year period, regardless of whether the owner accepts, rejects, or fails to act upon the contract, the property will continue to be subject to its extended use agreement as affordable housing. If the owner accepts the offer, the property will be sold to the purchaser. If the owner rejects the offer or fails to act upon the offer, the owner will continue to be subject to the extended use agreement and cannot submit another qualified contract request for the development.[20]

III. Effect of Proposed Changes:

Qualified Contract Process

The bill changes the process for qualified contracts for affordable housing projects.

Section 1 amends s. 420.503, F.S., to define the terms "bona fide contract" and "qualified contract". These definitions exist currently only in administrative rule.

Generally under current law, the "bona fide contact" is an offer to negotiate the purchase of a development in order to maintain its affordable housing status. The bill changes this administrative definition to mean "a certain and unambiguous offer to purchase the development, for an amount equaling or exceeding the qualified contract purchase price which is made in good faith by the qualified purchaser with the intent that such offer results in the execution of an enforceable, valid, and binding contract."

The bona fide contract must include:

- Requiring an initial, *nonrefundable* earnest money deposit from the purchaser of $50,000 to be made with an escrow agent, *unless waived by the seller*; and
- Obligating the purchaser to make a second, *nonrefundable* earnest money deposit equal to 3 percent of the qualified contract price to be deposited within 15 business days of the end of the due diligence period, *unless waived by the seller and subject to rights reserved by the purchaser in the event of seller failure to deliver insurable title or default*.

[19] Fla. Admin. Code R. 67-48.031.
[20] Fla. Admin. Code R. 67-48.031(11).

Under the bill, similar to the administrative rule, the initial and second earnest money deposits are nonrefundable. However, under the bill the bona fide contract can include a provision that allows the initial and second earnest money deposits to be refundable:

- If the seller fails to deliver insurable title at closing;
- If the seller terminates a fully executed contract due to a reason other than default of the purchaser (it is unclear if the "fully executed contract" refers to the bona fide contract or another contract, like the qualified contract discussed below);
- As provided in the contract; or
- If the owner defaults.

The changes from current administrative definitions also allow the waiver of the requirements to place the initial and second earnest money deposits in escrow and allow such deposits to be refunded for additional reasons.

The bill defines "qualified contract" has having "the same meaning as in 26 U.S.C. s. 42(h)(6)(F) in effect on the date of the preliminary determination certificate for the low-income housing tax credits for the development that is the subject of the qualified contract request, unless the Internal Revenue Code requires a different statute or regulation to apply to the development." The definition requires the Florida Housing to deem a bona fide contract to be a qualified contract at the time the second earnest money deposit is deposited in escrow in accordance with the terms of the bona fide contract and, in such event, the Florida Housing is deemed to have fulfilled its responsibility to present the owner with a qualified contract.

The terms created by the bill are circular, in that the term "bona fide contract" means an offer to purchase the development for a certain amount related to a "qualified contract"; and the term "qualified contract" includes within the meaning that a bona fide contract is deemed a qualified contract when certain actions occur.

Section 4 amends s. 420.5099, F.S., related to allocation of low-income housing tax credits, to determine what happens to the extended use agreement, that is the affordability period, in the event that a qualified contract does not close.

Under the bill, if a qualified contract fails to close due to (1) a default of the owner, (2) the termination by the owner due to a reason other than the purchaser's default, or (3) as otherwise provided for in the bona fide contract, then the development must remain subject to the extended use agreement and the owner is considered to have waived all rights to a qualified contract request. If a qualified contract fails to close for any other reason, the qualified contract process continues and the Florida Housing must continue to seek valid offers through the 1-year period. If no other qualified contract is presented to the owner during the 1-year period, the project must be treated as if no qualified contract had been presented, and the extended use period is terminated. In effect, this would end the affordability of the housing and allow the units to be provided at market rate.

Section 6 amends s. 420.628, F.S., to correct a cross reference.

Elderly Housing Community Loan Program

Section 2 amends s. 420.5078(5)(e), F.S., to repeal the requirements for these loans. The bill preserves the requirement that a certain amount of money be set aside for loans related to building preservation, health, life safety, and sanitation repairs and improvements, but removes statutory guidelines for the terms and requirements related to those loans.

Bond Issuance

Section 3 amends s. 420.509, F.S., to designate Florida Housing as the state fiscal agency to make the determination required by s. 16, Art. VII of the State Constitution, in connection with the issuance of Florida Housing bonds and removes the authority of the SBA to authorize an interest rate in excess of the maximum.

The section also allows, where applicable, Florida Housing to use the interest rate limitation on bond issuance set forth in ss. 159.825 or 215.84, F.S., as applicable. This change allows Florida Housing to bear higher interest on taxable bonds without seeking SBA approval.

Section 5 amends s. 420.5092, F.S., to remove the requirement for the Florida Housing Guarantee Program, now suspended, that the program's fund's financial rating remain consistent with rules adopted by the SBA. This is a technical change to conform to the bill's removal of the SBA from oversight responsibility.

Effective Date

Section 7 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:

The bill defines "qualified contract" to mean the same as in federal law "in effect on the date of the preliminary determination certificate…" Generally, the legislature may not

delegate its power to another branch of government, including the federal government.[21] "Where a statute generally incorporates a federal law or regulation, to avoid holding the subject statute unconstitutional, Florida courts interpret the statute as incorporating only the federal law in effect on the date of adoption of the Florida Statute."[22] It is unknown what changes, if any, that Congress may make to the federal law cited in the bill.

Further, the definition of qualified contract created in the bill is tied to the definition in federal law, "unless the Internal Revenue Code requires a different statute or regulation to apply to the development." It is unclear what other statutes or regulations that may include and therefore what the definition of qualified contract may include.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The effect of repealing the requirements for the EHCL program is unclear because it is unknown what administrative rules the Florida Housing will adopt, if it changes existing rules based on the current law. By repealing the limit on the amount of the loan, it is possible that larger loans could be made leading to more repairs for this type of housing; however the size of the loans may in turn limit the number of developments that can be repaired in any given yet. The effect on the repair and improvement of current developments with set-asides for the elderly is unknown.

The change of the definitions and application of the bona fide contract and the qualified contract may benefit owners of affordable housing developments that are at their 14-year periods of affordability. The provisions may make it easier for the owner to divest itself of an affordable housing development. This may limit the amount of affordable housing units available in the future.

C. Government Sector Impact:

According to the Florida Housing, the current multi-layer review process can cause unpredictable delays and subject transactions to market volatility. This bill would ameliorate that concern and positively impact Florida Housing's ability to reliably issue bonds.[23]

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[21] *See* s. 3, Art. II, Florida Constitution.

[22] *Abbott Lab'ys v. Mylan Pharms., Inc.*, 15 So. 3d 642, 655 (Fla. Dist. Ct. App. 2009). "…the Legislature may adopt provisions of federal statutes and administrative rules made by a federal administrative body, 'that are in existence and in effect at the time the legislature acts, but it would be an unconstitutional delegation of legislative power for the legislature to adopt in advance any federal act or the ruling of any federal administrative body that Congress or such administrative body might see fit to adopt in the future.'" *Freimuth v. State*, 272 So. 2d 473, 476 (Fla. 1972)

[23] Florida Housing Finance Corporation, *SB 196 Talking Points*, (November 11, 2021) on file with the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development.

The changes in the bill to the bona fide contract and qualified contract process may result in more owners entering the process, requiring Florida Housing to incur additional administrative costs in order to find purchasers and eligible offers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The definition of "qualified contract" requires Florida Housing to deem a bona fide contract to be a qualified contract at the time the second earnest money deposit is deposited in escrow in accordance with the terms of the bona fide contract. However, the bill appears to create a conflict with the definition of "bona fide contract" which allows the waiver of the earnest money deposits. If the deposit is waived, then it is unclear when the Florida Housing must deem a bona fide contract to be a qualified contract.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 420.509 and 420.5092.

IX. Additional Information:

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

CS by Appropriations on February 28, 2022:
The committee substitute repeals provisions that limit Elderly Housing Community Loan Program loans to $750,000 per housing community and the provisions related to how such loans can be made.

The committee substitute also amends definitions and regulations related to the qualified contract process, by which the Florida Housing seeks a purchaser for an affordable housing development. The changes affect when such a contract is entered and the operation of deposits related to the purchase.

B. Amendments:

None.

By Senator Rodriguez

39-00404B-22 2022196__

A bill to be entitled

An act relating to the Florida Housing Finance Corporation; amending s. 420.509, F.S.; designating the corporation, rather than the State Board of Administration, as the state fiscal agency to make determinations in connection with specified bonds; authorizing the corporation's board of directors, rather than the State Board of Administration, to delegate to its executive director the authority and power to perform that function; requiring the executive director to annually report specified information to the board of directors, rather than the State Board of Administration; revising applicable interest rate limitations on bonds of the corporation; amending s. 420.5092, F.S.; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Subsections (2) and (4) of section 420.509, Florida Statutes, are amended to read:

420.509 Revenue bonds.—

(2) The corporation ~~State Board of Administration~~ is designated as the state fiscal agency to make the determinations required by s. 16, Art. VII of the State Constitution in connection with the issuance of such bonds that in no state fiscal year will the debt service requirements of the bonds proposed to be issued and all other bonds secured by the same pledged revenues exceed the pledged revenues available for such

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

39-00404B-22 2022196__

debt service requirements. The corporation's board of directors ~~State Board of Administration~~ may delegate to its executive director the authority and power to perform that function ~~without further review of the agency~~. The determinations pursuant to this subsection ~~paragraph~~ are limited to a review of the matters essential to making the determinations required by s. 16, Art. VII of the State Constitution. The executive director shall report annually to the board ~~State Board of Administration~~ and the Legislature regarding the number of bond issues considered and the determination with respect thereto.

(4) Bonds of the corporation may:

(a) Bear interest at a rate or rates not exceeding the interest rate limitation set forth in s. 159.825 or s. 215.84, as applicable ~~s. 215.84(3), unless the State Board of Administration authorizes an interest rate in excess of such maximum~~;

(b) Have such provisions for payment at maturity and redemption before maturity at such time or times and at such price or prices; and

(c) Be payable at such place or places within or without the state as the board determines by resolution.

Section 2. Paragraph (b) of subsection (6) of section 420.5092, Florida Statutes, is amended to read:

420.5092 Florida Affordable Housing Guarantee Program.—

(6)

(b) If the claims payment obligations under affordable housing guarantees from amounts on deposit in the guarantee fund would cause the claims paying rating assigned to the guarantee fund to be less than the third-highest rating classification of

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

any nationally recognized rating service, which classifications being consistent with s. 215.84(3) ~~and rules adopted thereto by the State Board of Administration~~, the corporation shall certify to the Chief Financial Officer the amount of such claims payment obligations. Upon receipt of such certification, the Chief Financial Officer shall transfer to the guarantee fund, from the first available taxes distributed to the State Housing Trust Fund pursuant to s. 201.15(4)(c) and (d) during the ensuing state fiscal year, the amount certified as necessary to meet such obligations, such transfer to be subordinate to any transfer referenced in paragraph (a) and not to exceed 50 percent of the amounts distributed to the State Housing Trust Fund pursuant to s. 201.15(4)(c) and (d) during the preceding state fiscal year.

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 Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 2, 2022

I respectfully request that CB/SB 196, relating to Florida Housing Finance Corporation, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Ana Maria Rodriguez
Florida Senate, District 39

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

2/28/2022	SB 196
Meeting Date	Bill Number or Topic
Apprpriations	395542
Committee	Amendment Barcode (if applicable)

Name Trey Price, Executive Director of Florida Housing

Phone 850-488-4197

Address 227 N Bronough Street
Street

Email katie.norman@floridahousing.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 Housing Finance Corporation

☐ 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

2/28/2022
Meeting Date

Apprpriations
Committee

SB 196
Bill Number or Topic

151346
Amendment Barcode (if applicable)

Name Trey Price, Executive Director of Florida Housing

Phone 850-488-4197

Address 227 N Bronough Street
Street

Email katie.norman@floridahousing.org

Tallahassee FL 32301
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

APPEARANCE RECORD

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

2/28/2022
Meeting Date

Apprpriations
Committee

SB 196
Bill Number or Topic

193088
Amendment Barcode (if applicable)

Name Trey Price, Executive Director of Florida Housing

Phone 850-488-4197

Address 227 N Bronough Street
Street

Email katie.norman@floridahousing.org

Tallahassee FL 32301
City *State* *Zip*

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

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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

2/28/22
Meeting Date

S Appropriations
Committee

SB 196
Bill Number or Topic

Amendment Barcode (if applicable)

Name Steve Auger

Phone 850-557-0851

Address 448 Georgia St., St 1002
Street

Tall FL 32312
City State Zip

Email Steve.auger@gtlaw.com

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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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 Appropriations

BILL:	PCS/SB 268 (430822)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); and Senator Diaz
SUBJECT:	Proclamation of "Victims of Communism Day"
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brick	Bouck	ED	**Favorable**
2.	Grace	Elwell	AED	**Recommend: Fav/CS**
3.	Grace	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 268 requires the Governor to annually issue a proclamation designating November 7 as "Victims of Communism Day" and calls for public schools to suitably observe such day as a day honoring the 100 million people who fell victim to communist regimes across the world.

Beginning in the 2023-2024 school year, the bill requires high school students enrolled in the United States Government class required for a standard high school diploma to receive at least 45 minutes of instruction on Victims of Communism Day on topics related to communist regimes and how victims suffered under communist regimes. The State Board of Education must adopt revised social studies standards to include the new required instruction by April 1, 2023.

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II. Present Situation:

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- Sunday, the first day of each week;
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- Birthday of Robert E. Lee, January 19;
- Lincoln's Birthday, February 12;
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- Washington's Birthday, the third Monday in February;
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- Veterans' Day, November 11;
- General Election Day;
- Thanksgiving Day, the fourth Thursday in November;
- Christmas Day, December 25; and
- Shrove Tuesday, sometimes also known as "Mardi Gras," in counties where carnival associations are organized for the purpose of celebrating the same. [1]

Under s. 683.02, F.S., whenever a contract is to be performed in the state and reference is made to "legal holidays," the term includes the holidays designated in s. 683.01, F.S., and any other holidays designed in law. Alternatively, a legal holiday designation does not necessarily make a day a paid holiday for public employees. Section 110.117, F.S., establishes which legal holidays are paid holidays for the employees of all state branches and agencies.[2] Likewise, the court system does not necessarily use the legal holidays described in s. 683.01, F.S., while computing time frames for matters in civil and criminal procedure.[3]

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Chapter 683, F.S., includes 34 special observances.[4] Unlike legal holidays, special observances do not directly affect the definition of "legal holidays" in contracts. Special observance days may apply throughout the state, or they may be limited to particular counties. For example, "Gasparilla Day"[5] is a legal holiday observed only in Hillsborough County, while "Bill of Rights Day,"[6] if issued by the Governor, is observed throughout the state. Examples of other special observances include:

- Law Enforcement Memorial Day.[7]
- Patriots' Day.[8]
- Medal of Honor Day.[9]
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Communism

Communism is a political and economic philosophy that aims to replace private property and a profit-based economy with public ownership and communal control of the major means of production and society's natural resources. Karl Marx and his associate, Friedrich Engels, blamed capitalism for the unfavorable and often-hazardous conditions of workers during the Industrial Revolution. They presented this critique of capitalism in their widely circulated pamphlet, *Manifesto of the Communist Party*. [11]

One facet of the communist theory is that the proletariat would capture political power, abolish private property ownership, and take the private property of the bourgeoisie. Communism postulates that the taking and abolishment of private property by the proletariat would result in shared ownership of the means of production, ushering the world into a communal economic and societal utopia with equality for all.[12]

Before the full establishment of communism, however, the communist theory suggests that a transitional dictatorship of the proletariat may be necessary.[13] Communist movements throughout history have been unable to transition out of state control and dictatorship into the utopia of equality promised by communism and instead have universally devolved into tyranny and state-sanctioned murder of its own citizens.[14]

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[10] Section 683.21, F.S. (June 19)
[11] Encyclopedia Britannica, *Communism*, https://www.britannica.com/topic/communism (last visited Oct. 27, 2021).
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The Bolshevik Revolution, also known as the October Revolution, was the second of two revolutions in Russia in 1917. The Bolshevik Revolution was a revolution led by Vladimir Lenin in Russia against the ruling Russian Parliament. The coup began on November 7, 1917, when the Bolsheviks led the forces into Petrograd, then the capital of Russia. The Bolsheviks occupied government buildings and other locations across Petrograd. The coup led to the Russian Civil War and eventually the creation of the Soviet Union. The event inspired and ignited communist movements around the world. [15] However, instead of the expected dictatorship of the majority class of proletarians, the revolution resulted in a political party that claimed to represent proletarian interests.[16]

Victims of Communism

In addition to violations of freedom of speech, freedom of religion, loss of property rights, and the criminalization of ordinary economic activity, communist regimes in the 20th century intentionally killed their own citizens.[17] One researcher compiled data from 1900 to 1987 related to state-sanctioned killings to provide a metric to consider when reflecting on the victims of communism.

This researcher concluded that the Soviet Union is approximately responsible for the deaths of over 61 million people. "Stalin himself is responsible for almost 43 million of these. Most of the deaths, around 39 million, are due to lethal forced labor in gulag and transit thereto." The researcher found that Communist China (1923 – 1949) was responsible for about 3.5 million deaths, and the People's Republic of China (PRC) (1949 – present) was responsible for an additional 35.2 million deaths.

In Cambodia, Pol Pot and the Khmer Rouge likely killed about 2 million Cambodians from April 1975 through December 1978, out of a population of around 7 million – calculated annually, about 8 percent of the population died each year. During this time, the odds of an average Cambodian surviving Pol Pot's rule was slightly over two to one.

In sum, from 1900 to 1987, communist dictators and regimes were responsible for the death of approximately 110 million individuals. [18] In 1993, Congress made similar findings and authorized a national memorial to honor victims of communism. In addition to death, Congress found that "the imperialist regimes of international communism have brutally suppressed the human rights, national independence, religious liberty, intellectual freedom, and cultured life of the peoples of over 40 captive nations." The purpose of the memorial is to permanently honor the

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[18] Rummel, R.J., *How Many Did Communist Regimes Murder?* (Nov. 1993) *available at:* https://www.hawaii.edu/powerkills/COM.ART.HTM (last visited Oct. 27, 2021).

sacrifices of these victims "so that never again will nations and peoples allow so evil a tyranny to terrorize the world." [19]

Victims of Communism Day

The first national day recognizing victims of communism was November 7, 2017. Currently, three states have officially recognized November 7 as "Victims of Communism Memorial Day," and ten other states currently have legislation filed to follow suit.[20]

Required Instruction

Between 1961[21] and 1991,[22] Florida required the teaching of a 30-hour course of study for all students enrolled in public high schools entitled "Americanism vs. Communism." The instruction included the history, doctrines, objectives and techniques of communism with particular emphasis upon the dangers of communism, the ways to fight communism, the evils of communism, the fallacies of communism, and the false doctrines of communism.[23]

Requirements for a Standard High School Diploma

Beginning with students entering grade 9 in the 2013-2014 school year, receipt of a standard high school diploma requires successful completion of 24 credits, an International Baccalaureate curriculum, or an Advanced International Certificate of Education curriculum. Of the 24 required credits, three credits must be in social studies, including at least one credit in United States History, one credit in World History, one-half credit in Economics, and one-half credit in United States Government.

The course in United States Government must include a comparative discussion of political ideologies, such as communism and totalitarianism, that conflict with the principles of freedom and democracy essential to the founding principles of the United States.[24] Course standards include evaluating and defending positions on the founding ideals and principles of American Government, explaining how nations are governed differently, and comparing indicators of democratization in other countries, among others.[25] Course standards for World History include comparing the philosophies of capitalism, socialism, and communism; identifying factors that led to the decline and fall of communism in the Soviet Union and Eastern Europe; and analyzing the successes and failures of democratic reform efforts in Africa, Asia, the Caribbean, and Latin America.[26]

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[19] Pub. L. No. 103-199, s. 905 (Dec. 17, 1993).
[20] Victims of Communism Memorial Foundation, *Victims of Communism Memorial Day*, *available at*: https://victimsofcommunism.org/programs/memory/voc-day/ (last visited Oct. 19, 2021).
[21] Chapter 61-77, L.O.F.
[22] Section 81, ch. 91-105, L.O.F.
[23] Chapter 61-77, L.O.F.
[24] Section 1003.4282, F.S.
[25] *See* CPALMS, *United States Government Course Standards*, https://www.cpalms.org/Public/PreviewCourse/Preview/633 (last visited Oct. 19, 2021).
[26] *See* CPALMS, *World History Course Standards*, https://www.cpalms.org/PreviewCourse/Preview/4473# (last visited Oct. 19, 2021).

III. Effect of Proposed Changes:

This bill requires the Governor to annually proclaim November 7 as "Victims of Communism Day" and calls for public schools to suitably observe such day as a day honoring the 100 million people who fell victim to communist regimes across the world. The bill also requires Victims of Communism Day to be suitably observed by public exercise at the State Capitol and elsewhere as the Governor may designate.

The bill specifies that if November 7 falls on a day that is not a school day, Victims of Communism Day must be observed in the schools on the preceding school day or on such school day as may be designated by local school authorities.

Beginning in the 2023-2024 school year, the bill requires high school students enrolled in the United States Government course required for a standard high school diploma to receive at least 45 minutes of instruction on Victims of Communism Day on topics such as Mao Zedong and the Cultural Revolution, Joseph Stalin and the Soviet System, Fidel Castro and the Cuban Revolution, Vladimir Lenin and the Russian Revolution, Pol Pot and the Khmer Rouge, and Nicolás Maduro and the Chavismo movement and how victims suffered under these regimes through poverty, starvation, migration, systemic lethal violence, and suppression of speech.

The bill requires the State Board of Education to adopt revised social studies standards to include the new required instruction in the United States Government course by April 1, 2023.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has no fiscal impact on state funds. There may be a minimal cost to school districts to incorporate the required instruction into their curricula if it is not currently included.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 683.334 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.)

PCS (430822) by Appropriations Committee (Recommended CS by Appropriations Subcommittee on Education):
The proposed committee substitute requires the State Board of Education to adopt revised social studies standards to include the new required instruction in the United States Government course by April 1, 2023.

B. Amendments:

None.



576-03090-22

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to the proclamation of "Victims of Communism Day"; creating s. 683.334, F.S.; requiring the Governor to annually proclaim November 7 as "Victims of Communism Day"; requiring the day to be observed in public schools and by public exercise; requiring a day other than November 7 to be observed by public schools under a specified circumstance; requiring certain high school students to receive specified instruction on Victims of Communism Day; requiring the State Board of Education to adopt specified revised social studies standards; providing an effective date.

WHEREAS, more than 100 years have passed since the Bolshevik Revolution in Russia and the formation of the first communist government under Vladimir Lenin, leading to decades of oppression and violence under communist regimes throughout the world, and

WHEREAS, based on the economic philosophy of Karl Marx, communism has proven incompatible with the ideals of liberty, prosperity, and dignity of human life and has given rise to such infamous totalitarian dictators as Joseph Stalin, Vladimir Lenin, Mao Zedong, and Pol Pot, and

WHEREAS, communist regimes worldwide have killed more than 100 million people and subjected countless others to exploitation and unspeakable atrocities, with victims



576-03090-22

representing many different ethnicities, creeds, and backgrounds, and

WHEREAS, through false promises of equality and liberation or through coercion, brutality, and fear, communist regimes have systematically robbed their own citizens of the rights of freedom of worship, freedom of speech, and freedom of association, and

WHEREAS, many victims of communism were persecuted as political prisoners for speaking out against these regimes, and others were killed in genocidal state-sponsored purges of undesirable groups, and

WHEREAS, in addition to violating basic human rights, communist regimes have suppressed intellectual freedom, cultural life, and self-determination movements in more than 40 nations, NOW, THEREFORE,

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

Section 1. Section 683.334, Florida Statutes, is created to read:

683.334 Victims of Communism Day.—

(1) The Governor shall annually proclaim November 7 as "Victims of Communism Day," which must be suitably observed in the public schools of this state as a day honoring the 100 million people who fell victim to communist regimes across the world and which must be suitably observed by public exercise at the State Capitol and elsewhere as the Governor may designate.

(2) If November 7 falls on a day that is not a school day, Victims of Communism Day must be observed in the public schools



in this state on the preceding school day or on such school day as may be designated by local school authorities.

(3)(a) Beginning in the 2023-2024 school year, high school students enrolled in the United States Government class required by s. 1003.4282(3)(d) must receive at least 45 minutes of instruction on Victims of Communism Day to include topics such as Mao Zedong and the Cultural Revolution, Joseph Stalin and the Soviet System, Fidel Castro and the Cuban Revolution, Vladimir Lenin and the Russian Revolution, Pol Pot and the Khmer Rouge, and Nicolás Maduro and the Chavismo movement, and how victims suffered under these regimes through poverty, starvation, migration, systemic lethal violence, and suppression of speech.

(b) No later than April 1, 2023, the State Board of Education must adopt revised social studies standards for inclusion in the United States Government course required by s. 1003.4282(3)(d) which incorporate the requirements of this subsection.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 268
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); and Senator Diaz
SUBJECT:	Proclamation of "Victims of Communism Day"
DATE:	February 28, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brick	Bouck	ED	**Favorable**
2.	Grace	Elwell	AED	**Recommend: Fav/CS**
3.	Grace	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 268 requires the Governor to annually issue a proclamation designating November 7 as "Victims of Communism Day" and calls for public schools to suitably observe such day as a day honoring the 100 million people who fell victim to communist regimes across the world.

Beginning in the 2023-2024 school year, the bill requires high school students enrolled in the United States Government class required for a standard high school diploma to receive at least 45 minutes of instruction on Victims of Communism Day on topics related to communist regimes and how victims suffered under communist regimes. The State Board of Education must adopt revised social studies standards to include the new required instruction by April 1, 2023.

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The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has no fiscal impact on state funds. There may be a minimal cost to school districts to incorporate the required instruction into their curricula if it is not currently included.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 683.334 of the Florida Statutes.

IX. Additional Information:

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

CS by Appropriations on February 28, 2022:
The committee substitute requires the State Board of Education to adopt revised social studies standards to include the new required instruction in the United States Government course by April 1, 2023.

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 Diaz

36-00464-22 2022268__

A bill to be entitled

An act relating to the proclamation of "Victims of Communism Day"; creating s. 683.334, F.S.; requiring the Governor to annually proclaim November 7 as "Victims of Communism Day"; requiring the day to be observed in public schools and by public exercise; requiring a day other than November 7 to be observed by public schools under a specified circumstance; requiring certain high school students to receive specified instruction on Victims of Communism Day; providing an effective date.

WHEREAS, more than 100 years have passed since the Bolshevik Revolution in Russia and the formation of the first communist government under Vladimir Lenin, leading to decades of oppression and violence under communist regimes throughout the world, and

WHEREAS, based on the economic philosophy of Karl Marx, communism has proven incompatible with the ideals of liberty, prosperity, and dignity of human life and has given rise to such infamous totalitarian dictators as Joseph Stalin, Vladimir Lenin, Mao Zedong, and Pol Pot, and

WHEREAS, communist regimes worldwide have killed more than 100 million people and subjected countless others to exploitation and unspeakable atrocities, with victims representing many different ethnicities, creeds, and backgrounds, and

WHEREAS, through false promises of equality and liberation or through coercion, brutality, and fear, communist regimes have

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

36-00464-22 2022268__

systematically robbed their own citizens of the rights of freedom of worship, freedom of speech, and freedom of association, and

WHEREAS, many victims of communism were persecuted as political prisoners for speaking out against these regimes, and others were killed in genocidal state-sponsored purges of undesirable groups, and

WHEREAS, in addition to violating basic human rights, communist regimes have suppressed intellectual freedom, cultural life, and self-determination movements in more than 40 nations, NOW, THEREFORE,

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

Section 1. Section 683.334, Florida Statutes, is created to read:

683.334 Victims of Communism Day.—

(1) The Governor shall annually proclaim November 7 as "Victims of Communism Day," which must be suitably observed in the public schools of this state as a day honoring the 100 million people who fell victim to communist regimes across the world and which must be suitably observed by public exercise at the State Capitol and elsewhere as the Governor may designate.

(2) If November 7 falls on a day that is not a school day, Victims of Communism Day must be observed in the public schools in this state on the preceding school day or on such school day as may be designated by local school authorities.

(3) Beginning in the 2023-2024 school year, high school students enrolled in the United States Government class required

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by s. 1003.4282 must receive at least 45 minutes of instruction on Victims of Communism Day on topics such as Mao Zedong and the Cultural Revolution, Joseph Stalin and the Soviet System, Fidel Castro and the Cuban Revolution, Vladimir Lenin and the Russian Revolution, Pol Pot and the Khmer Rouge, and Nicolás Maduro and the Chavismo movement and how victims suffered under these regimes through poverty, starvation, migration, systemic lethal violence, and suppression of speech.

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

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR MANNY DIAZ, JR.
36th District

COMMITTEES:
Health Policy Chair
Appropriations Subcommittee on Education Vice Chair
Appropriations
Appropriations Subcommittee on Health and Human Services
Education
Commerce and Tourism
Rules

February 21, 2022

Honorable Senator Kelli Stargel
Chair
Committee on Appropriations

Honorable Chair Stargel,

I respectfully request that SB 268 Proclamation "Victims of Communism Day" to be scheduled for the next committee agenda.

Proclamation of "Victims of Communism Day"; Requiring the Governor to annually proclaim November 7 as "Victims of Communism Day"; requiring the day to be observed in public schools and by public exercise; requiring a day other than November 7 to be observed by public schools under a specified circumstance; requiring certain high school students to receive specified instruction on Victims of Communism Day.

Sincerely,



Senator Manny Diaz, Jr.
Florida Senate, District 36

CC: Tim Sadberry, Staff Director
Alicia Weiss, Committee Administrative Assistant
Chad Davis, Legislative Assistant

REPLY TO:
❒ 10001 Northwest 87th Avenue, Hialeah Gardens, Florida 33016 (305) 364-3073
❒ 306 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: *www.flsenate.gov*

Wilton Simpson
President of the Senate

Aaron Bean
President Pro Tempore

The Florida Senate

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2/28/2022
Meeting Date

APPROPRIATIONS
Committee

SB 268
Bill Number or Topic

Amendment Barcode (if applicable)

Name CHRISTIAN CALLARA

Phone 305 608 4300

Address PO Box 122
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:

MYSELF

☐ 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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SB 268
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Tania Sanchez

Phone (754) 2354139

Address 201 Racquet Club Rd Apt S-521
Street

Email tanisandez@gmail.com

Weston, FL 33326
City State Zip

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

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SB 268
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Martha Ruth Solomon Rev

Phone 954 798 1308

Address 3450 Hillsboro Blvd Apt 202
Street

Email mmartz@gmail.com

Coconut Creek FL 33073
City State Zip

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

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2/28/22
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SB 268
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Ivis Ramirez Phone 954 3366770

Address 201 Raquet club Rd Apt 5-521 Email ivisjramirez160263@gmail.com
Street

Weston FL 33326
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

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Feb 28 2022
Meeting Date

Comib
Committee

SB 268
Bill Number or Topic

Amendment Barcode (if applicable)

Name Ruth Villamizar

Phone 954 657 1410

Address 5790 Fox Hollow Dr Unit *
Street

Email pastor@diosviviente.com

Boca Raton FL 33486
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

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The Florida Senate

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Meeting Date

SB 268
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Elizabeth Santander-Cordero

Phone 954-632-4428

Address 9245 SW 43 St
Street

Email Elizabeth2020@yahoo.com

Miami FL 33165
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:

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S-001 (08/10/2021)

The Florida Senate

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February 28, 2022
Meeting Date

Senate Appropriations
Committee

268 (totalitarian regimes)
Bill Number or Topic

Amendment Barcode (if applicable)

Name Susan Aertker

Phone 904-262-5124

Address 10178 Foxcroft Rd W
Street

Email susaninflorida@gmail.com

Jacksonville FL 32257
City State Zip

I'd like you to vote NO or amend it as suggested - see attached.

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

PLEASE CHECK ONE OF THE FOLLOWING:

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S-001 (08/10/2021)

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2/28/22
Meeting Date

Senate Appropriations
Committee

SB-268
Bill Number or Topic

Amendment Barcode (if applicable)

Name Anthony Verdugo — Christian Family Coalition

Phone 786-447-6431

Address P.O. Box 650216
Street

Email averdugo@cfcfloridanet

Miami Florida 33265
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 Appropriations

BILL:	CS/CS/SB 466
INTRODUCER:	Appropriations Committee; Health Policy Committee; and Senator Torres and others
SUBJECT:	Military Medics and Corpsmen of Florida Program
DATE:	March 2, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	**Fav/CS**
2.	Brown	Caldwell	MS	**Favorable**
3.	Gerbrandt	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 466 creates the Military Corpsmen and Medics Program of Florida (MCMF program) within the Department of Health (DOH) to assist military-trained veterans and their spouses in identifying and applying for health care and health care-related employment and licensure, and identifying educational and training opportunities.

The bill requires the DOH to establish the MCMF Program Office of Veterans Advocacy (MCMF office) to provide information, guidance, and assistance with the licensure application process or with expedited licensure to military trained health care veterans and their spouses. The MCMF office must refer veterans and their spouses to the Department of Economic Opportunity (DEO) for assistance in resume writing and proofreading, job application completion, and interviewing skills and techniques.

The bill requires Florida is for Veterans Inc. (FIFVs), to establish, and maintain a statewide list of health care providers who agree to participate in the program and assist such providers in recruiting and hiring military-trained health care veterans and their spouses.

The bill authorizes the Board of Governors (BOG) and the State Board of Education (SBE) to create a process that enables military-trained health care veterans to earn uniform postsecondary educational credit for college-level education and training acquired while in the military.

The bill requires State universities, Florida College System Institutions, career centers, training schools, and training programs to award postsecondary education credit and career education and academic and clinical clock hours for certain courses taken and training received during military service.

The bill takes effect on July 1, 2022.

II. Present Situation:

The Department of Economic Opportunity

The Department of Economic Opportunity (DEO) assists the Governor in advancing Florida's economy by championing the state's economic development vision and by administering state and federal programs and initiatives to help visitors, citizens, businesses, and communities.

Jobs for Veterans' State Grant

The DEO administers, the Jobs for Veterans' State Grant program in coordination with 24 Local Workforce Development Boards to promote and maximize the employment of Florida's veteran population. The Jobs for Veterans' State Grant provides federal funding to support the staffing of Disabled Veterans' Outreach Program Specialists, Local Veterans' Employment Representatives, and Consolidated Positions throughout the CareerSource Florida Career Center Network.

The Jobs for Veterans' State Grant also supports the State Veterans' Program Office which is comprised of the State Veterans Program Coordinator, Regional Veterans Program Coordinators, and Intensive Service Coordinators. The State Veterans' Program Office ensures consistency and excellence in program service delivery through the provision of technical assistance, policy, training, and monitoring.

Florida's Jobs for Veterans' State Grant program prepares veterans, transitioning service members, and eligible spouses for meaningful careers through the development of a proactive employment plan and through connection to a career center and community resources to obtain and maintain employment.

The DEO Veterans' Employment Services and Programs include, but are not limited to the following services:

- Intensive case management services to veterans with significant barriers to employment including:
  - On-the-job training development;
  - Non-paid work experience;
  - Selective job placement;
  - Counseling;
  - Follow-up services;
  - Job-seeking skills training;
  - Job analysis; and
  - Labor market information.
- Outreach to employers to increase employment opportunities for veterans;

- Priority enrollment and participation in all USDOL funded employment and training programs, including technology-assisted activities; and

The VA Veteran Readiness and Employment (VR&E) Program is an employment and training program to assist disabled veterans who are being trained/retrained and rehabilitated for new careers by the U.S. Department of Veterans Affairs. VR&E services include on-the-job training development, non-paid work experience, selective job placement, case management, counseling, follow-up services, provision of job-seeking skills training, job analysis, labor market information, etc.

The Military Family Employment Advocacy Program delivers employment assistance services, including interviewing, assessment, counseling, job search and placement assistance, labor market information, resume assistance, etc., through Military Family Employment Advocates co-located within selected career centers. Spouses and dependents of active-duty military personnel, Florida National Guard members, and military reservists are eligible for assistance through this program.

The Employ Florida Vets portal is a function of the Employ Florida system and is tailored specifically to the needs and interests of veterans. One specific function is to translate Military Specialty Codes (represents military employment classification) into equivalent civilian job titles.

Florida Is For Veterans, Inc. (FIFV)

Section 295.21, F.S., created "Florida Is For Veterans, Inc.," within the Florida Department of Veteran Affairs as a separate nonprofit corporation to help military veterans transition to civilian life or moving to Florida through career service initiatives. FIFV's mission is to promote the value of military skill sets to businesses, assist in training veterans to match marketplace needs, and enhance entrepreneurial skills of veterans.

All agencies of the state are authorized and directed to provide technical assistance to FIFV and identify agency programs to provide assistance or benefits to veterans who are located in or considering relocation to the state. The FDVA may authorize the FIFV to use of FDVA property, facilities, and personnel services, as prescribed by contract.[1]

United States Armed Forces

The U.S. Armed Forces (U.S.A.F.) is made up of six military branches: Air Force, Army, Coast Guard, Marine Corps, Navy and, most recently, Space Force. The secretary of the U.S. Department of Defense (DoD) has control over the military and each branch, except the Coast Guard, which is under the Department of Homeland Security (DHS). With more than two million civilian and military employees, the U.S. DoD is the world's largest employer.[2]

[1] Section 295.21(1), F.S.
[2] Military.com, *What Are the Branches of the US Military?* available at https://www.military.com/join-armed-forces/us-military-branches-overview.html (last visited Feb. 3, 2022).

Enlisted Members vs. Officers

Joining the U.S. Armed Forces as an enlisted member or an officer has a significant impact on the type of experience and training a new recruit receives. All enlisted jobs require a high school diploma, although, with certain exceptions, a passing General Education Development (GED) test score is acceptable. While enlisted careers do include infantry roles, most jobs involve hands-on training for mechanical, transportation, human service, or office fields that transfer to the civilian world.

Almost all officer positions require a four-year college degree or equivalent. Officers are the managers of the military, acting in leadership roles that require planning, directing operations, and making critical decisions. Officer positions also include careers that require advanced degrees, such as law and medicine.[3]

Florida's Department of Health (DOH)

The Legislature created the DOH to protect and promote the health, safety, and welfare of all residents and visitors in the state.[4] The DOH is charged with the regulation of health practitioners for the preservation of the health, safety, and welfare of the public. The Division of Medical Quality Assurance (MQA) is responsible for the boards[5] and professions within the DOH.[6]

Health Care Practitioner Regulation

The DOH, Division of MQA, provides health care practitioner regulation and support to health care licensure boards and councils. Boards are responsible for approving or denying an applicant's license based upon:

- Reviewing applicant qualifications specified in statute;
- Reviewing continuing education courses and practitioners;
- Promulgating administrative rules authorized by statute;
- Determining probable cause in cases resulting from complaints; and
- Disciplining practitioners found to be in violation of applicable laws.

The Division of MQA licenses and regulates seven types of health care facilities and more than 200 license types in over 40 professions, while partnering with 22 boards and four councils.[7]

Health Care Practitioner Scope of Practice

The scope of practice for a regulated health care profession includes activities and procedures that a person with a specified level of education, training, and competency is authorized to perform under laws and rules of the state in which the person practices. Scope of practice can

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[3] Today's Military, *Enlisted and Officer Paths*, available at https://www.todaysmilitary.com/ways-to-serve/enlisted-officer-paths (last visited Feb. 3, 2022).
[4] Sections 20.43(1) and 456.003, F.S.
[5] 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.
[6] Section 20.43(3), F.S.
[7] Department of Health, *2022 Agency Legislative Bill Analysis of CS/SB 466*, pg. 2 (Feb. 3, 2022) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

also incorporate conditions that may limit the exercise of authorized activities and procedures.[8] Licensed health care practitioners[9] in Florida may only perform that which is authorized by the scope of practice for their profession. Individuals who perform functions outside of their scope of practice are subject to discipline. Individuals who perform tasks that are specific to a scope of practice identified in statute without required licensure may be considered to be performing unlicensed activities in violation of law.[10]

The Board of Medicine

The Florida Board of Medicine (BOM) functions within the DOH/MQA, and is composed of 15 members appointed by the Governor and confirmed by the Senate. Twelve members of the BOM must be licensed physicians in good standing who are state residents and have been actively engaged in the practice or teaching of medicine for at least four years immediately preceding their appointment. Of the members, one must be a full-time faculty member of a Florida medical school; one must be in private practice; one must be a full-time staff member of a statutory teaching hospital; and at least one must be a graduate of a foreign medical school. The remaining three members are consumer members who are residents of the state and have never been licensed health care practitioners. One member must be a health care risk manager and at least one member must be 60 years of age or older.

Practice of Medicine

A physician is a person who is licensed to practice medicine in Florida. Practice of medicine includes the diagnosis, treatment, operation, or prescription for disease, pain, injury, deformity, or other physical or mental condition.[11]

Allopathic standards of practice and standards of care for particular practice settings 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,

[8] Federation of State Medical Boards, *Assessing Scope of Practice in Health Care Delivery: Critical Questions in Assuring Public Access and Safety* (April 2005) available at https://www.fsmb.org/siteassets/advocacy/policies/assessing-scope-of-practice-in-health-care-delivery.pdf The Federation of State Medical Boards is an association whose members include all medical licensing and disciplinary boards in the U.S. and U.S. territories. The Federation acts as a collective voice for 70 member medical boards in promoting high standards for medical licensure and practice. The Guidelines recommend that State regulators and legislators review various factors when considering scope of practice initiatives in the interest of public health and patient safety.

[9] Section 456.001, F.S., defines a "health care practitioner" to mean any person licensed under chapter 457 (acupuncture); chapter 458 (medical practice); chapter 459 (osteopathic medicine); chapter 460 (chiropractic medicine); chapter 461 (podiatric medicine); chapter 462 (naturopathy); chapter 463 (optometry); chapter 464 (nursing); chapter 465 (pharmacy); chapter 466 (dentistry, dental hygiene, and dental laboratories); chapter 467 (midwifery); part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468 (speech-language pathology, nursing home administration, occupational therapy, respiratory therapy, dietetics and nutrition practice, athletic trainers, orthotics, prosthetics, and pedorthics); chapter 478 (electrolysis); chapter 480 (massage therapy); part I, part II, or part III of chapter 483 (clinical laboratory personnel, medical physicists, genetic counseling); chapter 484 (dispensing of optical devices and hearing aids); chapter 486 (physical therapy practice); chapter 490 (psychological services); or chapter 491 (clinical, counseling, and psychotherapy).

[10] Section 456.072, F.S.

[11] Section 458.305(3), F.S.

records, performance of complex or multiple procedures, informed consent, and policy and procedure manuals.[12]

The Practice of Nursing

The scope of practice of nursing varies based on the type of education, training, and nursing licensure held by the health care practitioner.

Licensed Practical Nurse (LPN)

An LPN may perform selected acts, including:
- The administration of treatments and medications;
- The promotion of wellness, maintenance of health, and prevention of illness of others under the direction of a registered nurse, a licensed physician, a licensed osteopathic physician, a licensed podiatric physician, or a licensed dentist; and
- The teaching of general principles of health and wellness to the public and students other than nursing students.[13]

Qualifications and training for licensure for an LPN, in accordance with s. 464.003, F.S., includes the following minimum education qualifications and exam requirements, with noted alternative methods to meet requirements:
- Graduation from a Florida approved, or accredited LPN nursing education program as defined in s. 464.003, F.S.;
- Graduation from an Accreditation Commission for Education in Nursing (ACEN) or Commission on Collegiate Nursing Education (CCNE) accredited LPN nursing program that has been issued a National Council Licensure Examination (NCLEX) code by the National Council of State Boards of Nursing (NCSBN);
- Graduation from an LPN nursing education program that is approved or recognized by the jurisdiction in which it is based and that has been issued an NCLEX code by the NCBSN;
- Graduation from a military nursing education program that has been issued an NCLEX code by NCSBN;
- Graduation from a non-NCSBN jurisdiction (e.g. Puerto Rico), or international nursing education program that the Board of Nursing (BON) determines to be equivalent to an approved program; or
- Successful completion of courses in a registered nursing education program that are equivalent to a practical nursing education program – Practical Nurse Examination based on practical nursing Equivalency (PNEQ).

An LPN may also qualify for licensure in Florida by meeting endorsement qualifications (holding a valid license in another state and meeting other minimum qualifications) or by Nurse Licensure Compact.

All nursing programs requesting Board of Nursing approval must conform to the state Department of Education curriculum framework. Required content of a practical nursing

[12] Section 458.331(1)(v), F.S.
[13] Section 464.003(18), F.S.

program must cover medical, surgical, obstetrical, pediatric, geriatric, acute care in long term care and community settings; personal, family, and community health concepts; nutrition; human growth and development; body structure and function; interpersonal relationship skills; mental health concepts; pharmacology and medication administration; and legal aspects of nursing. Additionally, the curriculum must include at least 50% clinical training.[14]

Certified Nursing Assistant (CNA)

A CNA may provide care and assistance to persons with tasks related to activities of daily living. These tasks include personal care, maintaining mobility, nutrition and hydration, toileting and elimination, assistive devices, safety and cleanliness, data gathering, reporting abnormal signs and symptoms, postmortem care, patient socialization and reality orientation, end-of-life care, cardiopulmonary resuscitation and emergency care, residents' or patients' rights, and documentation of nursing-assistant services. Other tasks may be performed upon completion of training beyond the minimum qualifications for initial certification and upon validation of competence in that skill by an RN.[15]

Qualifications and training for licensure for a CNA, in accordance with s. 464.203, F.S., include the following education qualifications and exam requirements, with noted alternative methods to meet requirements.

- Successfully complete an approved training program and a minimum score on the nursing assistant competency examination;
- Achieve a minimum score, established by rule of the board, on the nursing assistant competency examination, and have a high school diploma, or its equivalent; or is at least 18 years of age;
- Complete curriculum developed under the Enterprise Florida Jobs and Education Partnership Grant and a minimum score on the nursing assistant competency examination; or
- Qualify for licensure by endorsement if currently certified in another state or territory of the U.S. or District of Columbia and successfully complete criminal history and discipline history requirements.

The CNA Examination must consist of a written exam and a clinical skills test. Both must be passed within a two-year period in order to achieve certification. General areas of competency of the written exam include: the role of the nursing assistant; promotion of safety; promotion of function and health of patients; and basic and specific nursing care for patients with changes in health. For the written exam, the BON accepts a minimum passing score of 76 percent.[16]

The CNA clinical skills exam includes four test areas: personal care, promotion of function, health and safety; reporting and recording; and hand washing. If an applicant fails to pass the CNA competency examination three times, the applicant is not eligible for reexamination unless the applicant completes an approved training program.[17]

[14] Fla. Admin. Code. R. 64B9-2.021 (2021).
[15] Section 464.201(5), F.S.
[16] Fla. Admin. Code R. 64B9-15.008 (2021).
[17] *Id.*

Emergency Medical Services (EMS)

The Legislature created ch. 401, F.S., in 1973 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;[18] and
- To protect and enhance public health, safety, and welfare with the establishment of 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
  - Develop minimum standards for EMS providers, personnel, vehicles, services, medical direction, and inspections.[19]

The Legislature further created the Florida Emergency Medical Services Grant Act.[20] 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.[21]

Emergency Medical Service Providers

Entities that provide prehospital or interfacility advanced life support (ALS) services or basic life support (BLS) transportation services must be licensed as a BLS service or an ALS service, or both.[22]

Emergency Medical Technician (EMT)

An EMT is certified by the DOH to perform BLS techniques.[23] BLS techniques include treatment of medical emergencies by a certified EMT qualified in the use of techniques of patient assessment, CPR, splinting, obstetrical assistance, bandaging, administration of oxygen, application of medical anti-shock trousers, administration of a subcutaneous injection using an auto-injector of epinephrine for an anaphylactic reaction, and other techniques described in the U.S. DOT, EMT Basic Training Course Curriculum (EMT-BTCC).[24]

Qualifications and training for an EMT, in accordance with s. 401.27, F.S., include the following minimum requirements:

- Out of state or military applicants trained in accordance with either the 1994 U.S. DOT EMT-Basic National Standard Curriculum or the January 2009 U.S. DOT National EMS

[18] Section 401.013, F.S.
[19] Section 401.211, F.S.
[20] *See* ss. 401.101 and 401.104, F.S.
[21] Section 401.111, F.S.
[22] Section 401.25(1), F.S.
[23] Section 401.23(11), F.S.
[24] Section 401.23(7), F.S.

Education Standards and who currently hold a valid EMT certification from the National Registry of Emergency Medical Technicians (NR-EMT);
- Completion of an emergency medical technician training course equivalent to the most recent emergency medical technician basic training course of the U.S. DOT, within one year after course completion have passed an examination for an emergency medical technician, and hold either a current American Heart Association cardiopulmonary resuscitation course card or an American Red Cross cardiopulmonary resuscitation course card or its equivalent.

To be eligible for an EMT certification in Florida, an applicant must:
- Submit a completed application;
- Submit proof to the Certification Unit of meeting required professional education in one of the following ways:
  - *Florida Trained* – Successful completion of EMT course from a DOH approved program within two years of passing the examination;
  - *Out-of-State Trained* – Submit proof of current NR-EMT certification;
  - *Florida Paramedic Certification.* A Florida certified paramedic may use his or her paramedic certificate, provided it is current and in good standing, to satisfy professional education requirements for certification as an EMT; or
  - If the applicant was initially trained in Florida, received a Florida EMT certification, but did not maintain certification, the applicant may apply by *Out of State Certification* and submit a copy of either:
    - An American Red Cross CPR for Professional Rescuer card; or
    - An American Heart Association BLS for the Healthcare Provider.

Paramedic

A certified paramedic may perform both BLS and ALS.[25] 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.[26]

A member of the U.S. Armed Forces, on active duty, who at the time he or she became a member, was in good standing with the DOH, and certified to practice as an EMT or paramedic in Florida remains in good standing without registering, paying dues or fees, or performing any other act, as long as he or she is an active duty member of the U.S. Armed Forces, and for a period of six months after discharge from active duty.[27]

Protection of the public is incumbent upon the accurate determination that a health care professional is qualified to practice the health care profession for which they are seeking licensure. Florida statutes delineate minimum qualifications for each license based on the profession and the associated scope of practice. However, all professions have the same general categories of requirements for licensure, including:

[25] Section 401.23(17), F.S.
[26] Section 401.23(1), F.S.
[27] Section 401.271, F.S.

- Minimum educational requirements, which may also encompass an internship program or residency training.
- Successful examination completion. Most health care professions require successful completion of a national examination to demonstrate competency.
- Criminal history evaluation. All applicants are required to disclose prior criminal history, and professions identified in s. 456.0135, F.S., require electronic fingerprint submission. Certain criminal activity reflected in the history may preclude licensure.
- Disciplinary history evaluation. Disciplinary history evaluation includes all prior licensure in any profession in any jurisdiction. Certain types of discipline may preclude licensure.
- Health history evaluation. Applicants are required to disclose health history, including evidence of impairment. Boards evaluate the disclosure to determine if the applicant is safe to practice prior to making a final licensure determination.

To be eligible for a paramedic certification in Florida, an applicant must:
- Submit a completed application;
- Possess a high school diploma or GED;
- Submit proof to the Certification Unit of meeting the required professional education in one of the following ways:
  - *Florida Trained* - Successful completion of a paramedic course from an approved program within two years of passing the examination;
  - *Out of State Certification* – Proof of current NR-EMT certification; or
  - *Health Professional Licensure* – A Florida licensed physician, physician assistant, dentist, or registered nurse may apply for certification as a paramedic and subsequently challenge the paramedic exam, provided he or she holds a Florida EMT certificate which is current, in good standing, and has successfully completed an advance cardiac life support course.[28]

The Florida Department of Education

The Department of Education (DOE) serves as the single repository of education data from school districts, state and community colleges, universities, and independent postsecondary institutions, allowing the DOE to track student performance over time and across varying education sectors. The DOE administers a statewide reading initiative for Florida's public schools, and among community groups and volunteer organizations that support them, with a goal of having every child able to read at or above grade level; and serves approximately 2.8 million students, 4,400 public schools, 28 colleges, 202,500 instructional staff, 46,000 college professors and administrators, and 340,000 full-time staff throughout the state, the DOE enhances the economic self-sufficiency of Floridians through programs and services geared toward college, workforce education, apprenticeships, job-specific skills, and career development.

[28] Section 401.25, F.S.; Fla. Admin. C. Rule 64J-1.009, (2021); Florida Department of Health, Licensing and Regulation, EMT and Paramedics, Licensing, *Paramedic*, available at https://www.floridahealth.gov/licensing-and-regulation/emt-paramedics/licensing/index.html (last visited Feb. 3, 2022).

The Articulation Coordination Committee

In 1996, the Articulation Coordinating Committee (ACC) directed an effort to establish a list of common prerequisite courses for every university degree program. Specifically, s. 1007.25(5), F.S., directs the DOE to "identify common prerequisite courses and course substitutions for degree programs across all institutions." These common degree program prerequisites must be offered and accepted by all state universities and community colleges, except in cases approved by the State Board of Education (SBE) and the Board of Governors (BOG). The statute also directs the department to develop a centralized database containing the list of approved courses and courses substitutions that meet the prerequisite requirements for each baccalaureate degree program. Required completion of common prerequisites is further addressed in SBE Rule 6A-10.024 and BOG Articulation Regulation.

The mission of the Office of Articulation is to facilitate the effective and efficient progression and transfer of students through Florida's K-20 education system. Through the work of the ACC, a K-20 advisory body appointed by the Commissioner of Education, the office coordinates ways to help students move easily from institution to institution and from one level of education to the next.

The ACC serves as an advisory board to the SBE and the BOG on postsecondary transition issues. The committee provides a unique K-20 forum for cross-sector collaboration that informs the policy decisions of the SBE and the BOG regarding the implementation of the statewide articulation agreement. The ACC reports to the commissioner and comprises of the following members: two members each representing the State University System (SUS), the Florida College System (FCS), public career and technical education, public K-12 education, and non-public education, and one member representing students.

The ACC is responsible for reviewing and monitoring the different components of Florida's articulation system and making policy recommendations to facilitate seamless articulation between and among public schools, career and technical education centers, FCS institutions, state universities, and nonpublic postsecondary institutions. For instance, the ACC annually reviews statewide articulation agreements as well as the statewide course numbering system, the levels of courses, and the application of transfer credit requirements among public and non-public institutions participating in the statewide course numbering system.

Section 1007.096, F.S., requires the BOG, in consultation with the Florida Department of Veterans' Affairs, to adopt regulations, and the SBE to adopt rules that create a process that enables eligible servicemembers or veterans of the United States Armed Forces to earn uniform postsecondary credit across all Florida public postsecondary educational institutions for college-level training and education acquired in the military. The regulations and rules must include procedures for credential evaluation and the uniform award of postsecondary credit or career education clock hours, including, but not limited to, equivalency and alignment of military coursework with appropriate postsecondary courses and course descriptions.

The ACC is responsible for developing a process for determining postsecondary course equivalencies and the minimum postsecondary credit or career education clock hours that must

be awarded for courses taken and occupations held by individuals during their service in the military.

The ACC workgroup is composed of the following 13 members who establish a process for prioritizing and determining postsecondary course equivalencies and the minimum postsecondary credit or career education clock hours that must be awarded for courses taken and occupations held by individuals during their service in the military. The workgroup then provides recommendations to the BOG and the SBE for approval at the next meeting of each board to allow for adequate public notice. Upon approval of the workgroup's recommendations by the BOG and the SBE, the ACC facilitates the review of courses taken and occupations held by individuals during their service in the military for postsecondary course equivalencies and the minimum postsecondary credit or career education clock hours that must be awarded in accordance with the approved process.

Within one year after approval of the workgroup's recommendations by the BOG and the SBE, the ACC must approve a prioritized list of postsecondary course equivalencies and the minimum postsecondary credit or career education clock hours that must be awarded for courses taken and occupations held by individuals during their service in the military. The list must be updated annually. The BOG and the SBE must timely adopt the list approved by the ACC at the next meeting of each board to allow for adequate public notice. The postsecondary course equivalencies and the minimum postsecondary credit or career education clock hours must be awarded for courses taken and occupations held by individuals during their service in the military as delineated by the SBE and the BOG in the statewide articulation agreement

State universities, Florida College System institutions, and career centers must award postsecondary credit or career education clock hours for courses taken and occupations held by individuals during their service in the military based on the list adopted by the BOG and the SBE if the credit or career education clock hours are applicable toward the student's degree or certificate. Institutions may award additional postsecondary credit or career education clock hours if appropriate. Credit or career education clock hours awarded in accordance with minimum postsecondary credit and clock hour require.

III. Effect of Proposed Changes:

Military Corpsmen and Medics Program of Florida

Program Purpose

The bill creates the Military Corpsmen and Medics Program of Florida (MCMF program) within the Department of Health (DOH) to assist military-trained veterans and their spouses in identifying and applying for health care and health care-related employment and licensure, and identifying educational and training opportunities.

Definitions

A military-trained veteran is a person who:

- Has served within the preceding consecutive 12 months as an Army Combat Medic Specialist, Air Force or Space Force Aerospace Medical Service Technician, Navy or Fleet Marine Force Hospital Corpsman, or Coast Guard Health Services Technician;
- Was discharged or separated from military service under conditions other than dishonorable or upgraded to an honorable discharge;

A participating health care provider is:
- A physician licensed under chs. 458, or 459, F.S.;
- A professional corporation or partnership of a licensed physicians licensed under ch. 458 or ch. 459, F.S.;
- A hospital or ambulatory surgical center licensed under ch. 395, F.S.;
- An office registered under s. 458.328 or s. 459.0138, F.S;
- A company with a medical facility for its employees which is supervised by at least one licensed physician; or
- A facility licensed under ch. 395, F.S., which offers medical services to the public and is supervised by at least one licensed physician.

A veteran as referenced in the bill means a former member of the Florida National Guard who was discharged or separated from service under conditions other than dishonorable or upgraded to an honorable discharge, or as the term "veteran" is defined in s. 1.01(14), F.S., which means a person who served in the active military, naval, or air service and who was honorably discharged or released or who later received an upgraded discharge.

Program Components

The bill requires the DOH to establish the MCMF Program Office of Veterans Advocacy (MCMF office) to provide information, guidance, and assistance with the licensure application process or with expedited licensure to military trained health care veterans and their spouses.

The MCMF office must be headed by a MCMF Program Veterans' Advocate (MCMF advocate) who has an understanding of the practice requirements of the DOH recognized licensed occupations and professions, and certain military training and educational opportunities. The MCMF advocate must collaborate with the United States Department of Defense, The Department of Veterans ' Affairs, the DEO, Florida is for Veterans, Inc., the Department of Education, and other stakeholders to further the mission of the program.

The MCMF advocate duties include, but are not limited to the following, as they relate to military trained health care veterans and their spouses:
- Provide information, guidance, direction, and assistance, as appropriate, with health care or health care related licensure applications or with expedited licensing requirements;
- Provide information on statewide educational and training opportunities and resources;
- Provide information on education and training required to obtain a license in a health care or health care-related field; and
- Provide information on the expedited state licensure qualifications for certain health care fields.

The MCMF office must refer veterans and their spouses to the Department of Economic Opportunity (DEO) for assistance in resume writing and proofreading, job application completion, and interviewing skills and techniques.

Additional Assistance for Veterans and their Spouses

Veterans who do not meet definition of the term "military-trained health care veteran" but who served in a health care related field may receive assistance from the MCMF program through the DEO in resume writing, mentorship, and obtaining employment with participating health care providers.

The MCMF Program through the Department of Economic Opportunity shall assist veterans and their spouses who have gained management experience or have completed an advanced degree in finding civilian health care leadership and management employment opportunities in a variety of health care and health care-related disciplines.

The bill grants rulemaking authority to the DOH to implement the provisions of the bill.

Florida is for Veterans, Inc.

The bill amends s. 295.22, F.S., to require Florida is for Veterans, Inc. (FIFVs), to collaborate with the DOH to implement the MCMF program, in coordination with the DEO and MCMF office. Specifically, FIFVs is required to:

- Recruit, establish, and maintain a statewide list of participating health care providers who agree to employ qualified veterans.
- Assist participating health care providers in recruiting and hiring military-trained health care veterans and their spouses.
- Provide assistance and mentorship in resume writing and proof reading, interview training, and application assistance to military-trained veterans and their spouses. FIFV is authorized to coordinate with the Department of Economic Opportunity (DEO) to make referrals for such assistance.
- Assist certified military-trained veterans and their spouses in identifying participating health care providers for potential employment.
- Assist military-trained veterans and their spouses, who have gained management experience or have an advanced degree, in finding civilian healthcare leadership and management employment.

Department of Education

The bill creates s. 1004.0963, F.S., authorizing the Board of Governors (BOG) and the State Board of Education (SBE) to create a process that enables military-trained health care veterans to earn uniform postsecondary educational credit for college-level education and training acquired while in the military.

The bill requires the Articulation Coordinating Committee to convene a workgroup by July 15, 2023, to develop a process for determining postsecondary educational course equivalencies and minimum educational credit or career education and academic and clinical clock hours that may

be awarded for courses taken and occupations held during military service. The Articulation Coordinating Committee must approve a prioritized list of such equivalencies, based on the recommendations made by the workgroup, and the list must be updated on an annual basis. The bill authorizes the Articulation Coordinating Committee to form a subcommittee for carry out the duties as they relate to the bill.

The office of K-20 Articulation must provide administrative support to the workgroup. The workgroup must be composed of the following 10 members:

- The chair of the Articulation Coordinating Committee;
- One member, appointed by the BOG, representing academic affairs administrators and faculty with expertise in health care.
- One member, appointed by the SBE, representing academic affairs administrators and faculty with expertise in health care.
- One member, appointed by the SBE, representing faculty from career centers with expertise in health care.
- Two members, appointed the Executive Director of the Florida Department of Veteran Affairs, representing veterans familiar with military educational training.
- Four faculty members, appointed by the DOH, representing health care professions.

The list of approved educational course equivalencies and educational credit for courses taken and occupations held during military service must be delineated in the statewide articulation agreement. State universities, Florida College System Institutions, career centers, training schools, and training programs must award postsecondary education credit and career education and academic and clinical clock hours for certain courses taken and training received during military service.

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:

CS/CS/SB 466, in part, is designed to address the shortage of health care professionals in this state, but impact is indeterminate at this time.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not address adverse incident reporting or professional liability insurance.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 295.126, and 1004.0963.

The bill substantially amends section 295.22 of the Florida Statutes**.**

IX. Additional Information:

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

CS/CS by Appropriations on February 28, 2022:
The committee substitute:

- Creates the Military Corpsmen and Medics of Florida Program (MCMF program) within the Department of Health (DOH) to assist military-trained veterans and their spouses in finding employment in a health care or health care related field, and to offer educational credit for certain military service that can be applied toward licensure requirements.
- Deletes all provisions related to the Military Corpsmen and Medics of Florida (MMACOF) Program including the MMACOF Health Care Certification program and rule making authority as it relates to such certification program.

- Deletes provisions related to the Board of Medicine's responsibility to determine qualified status under the certification program, and the responsibility to determine scope of practice of military trained veterans.
- Defines "license" to mean any permit, registration, certificate, or license, including a provisional license, issued by the department.
- Revises the definition of "military-trained veteran" to include one of the following:
  - Army Combat Medic Specialist.
  - Nay Fleet Marine Force Hospital Corpsmen.
  - Air Force or Space Force Aerospace Medical Service Technician.
  - Coast Guard Health Services Technician.
  - Any other military position similar to civilian X-ray technicians, dental assistants, or phlebotomists.
- Revises the definition of "veteran" to include a former member of the Florida National Guard who was discharged or separated from services under conditions other that dishonorable or upgrade to an honorable discharge.
- Revises the purpose of the program to include assisting military-trained veterans and their spouses with the following:
  - Identifying and applying for health care and health care related employment and licensure, for which they may or may not immediately qualify.
  - Connect veterans who have military health care experience with health care organizations.
  - Facilitate access to training and education in health care and health care related fields to promote the health care licensing programs provided in Florida.
  - Identify health care or health care related organizations and training programs that will recognize a veterans and their spouse's medical skills and allow such veteran to gain employment and work toward obtaining the appropriate health care license.
  - Assist veterans and their spouses with certain licenses.
- Requires the DOH to establish the MCMF Program Office of Veterans Advocacy (Office) to provide veterans and their spouses with the following:
  - Information, guidance, and assistance with the licensure application process or with expedited licensure
  - Training opportunities and resources.
  - Assistance with certain licensure requirements.
  - Referrals to the Department of Economic Opportunity for assistance with resume writing and proofreading, job application completion, and interviewing skills.
- Requires the Office to be headed by a qualified individual.
- Requires the MCMF office to refer veterans and their spouses to the Department of Economic Opportunity (DEO) for assistance in resume writing and proofreading, job application completion, interviewing skills and techniques, and finding employment.
- Requires the DOH to waiver all application fees, certificate fees, and unlicensed activity fees for military trained health care veterans and they're spouses.
- Authorizes rule making authority for DOH to implement the MCMF program.
- Revises the duties of the FIFV under the program to include:
  - Recruiting, establishing, and maintaining a statewide list of health care providers who agree to participate in the MCMF program.

  - Assisting health care providers in recruiting and hiring military trained health care veterans and their spouses.
  - Making referrals to the DEO for assistance in resume writing and proofreading, job application completion, and interviewing skills.
- Authorizes the Board of Governors (BOG) and the State Board of Education (SBE) to create a process that enables military-trained health care veterans to earn uniform postsecondary educational credit for college-level education and training acquired while in the military.
- Requires the Articulation Coordinating Committee to convene a workgroup by July 15, 2023 and develop a process for determining postsecondary educational course equivalencies and minimum educational credit or career education and academic and clinical clock hours that must be awarded for courses taken and occupations held during military service. Requires the workgroup to provide recommendations to the BOG and SBE by December 1, 2024.
- Requires the workgroup to be composed 10 members and be administratively supported by the Office of K-20 Articulation.
- Requires that the list of approved educational course equivalencies and educational credit for courses taken and occupations held during military service must be delineated in the statewide articulation agreement.
- State universities, Florida College System Institutions, career centers, training schools, and training programs must award postsecondary education credit and career education and academic and clinical clock hours for certain courses taken and training received during military service.

CS by Health Policy on January 13, 2022:
The CS:
- Authorizes the DOH to establish and administer the program, in collaboration with the FIFV, instead of the FDVA establishing and administering the program;
- Applies to military veterans and their spouses, not just military veterans;
- Requires the DOH to waive certain fees for program applicants;
- Provides application requirements;
- Requires disclosure of specific information by an applicant;
- Requires the participating health care providers to agree to specified terms;
- Requires a specific application process;
- Requires the board, and any other boards it deems appropriate, to determine areas of practice and specify what skills the veterans may perform under direct supervision;
- Requires the certificate holder, DOH, FIFV, participating health care providers, and certain education and training programs to provide specific information to each other within specified time periods regarding employment status and the status of the veteran’s enrollment on at least a half-time basis in an approved program;
- Authorizes grounds for denial of a certificate or disciplinary action against a certificateholder;
- Authorizes both the DOH or the board to issue disciplinary orders;
- Authorizes the DOH to make rules for certificate renewal; the board to make rules to establish guidelines for the disposition of disciplinary cases; and the DOH and the board to make rules to implement s. 295.126, F.S.; and

- Amends s. 295.21, F.S. to authorize the creation of a subprogram dedicated to health care services employment for veterans in Florida.

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: RS	.	
03/01/2022	.	
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	.	
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The Committee on Appropriations (Torres) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 295.126, Florida Statutes, is created to read:

295.126 Military Corpsmen and Medics of Florida (MCMF) program.—

(1) LEGISLATIVE INTENT.—It is the intent of the Legislature to assist military-trained health care veterans and their

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spouses in finding employment in this state's health care and health care-related industries, occupations, and professions as they transition to civilian life and to offer educational credit to military-trained health care veterans for their service in the United States military, to be applied toward the education and training required in this state to attain a health care or health care-related licensure to enter a health care or health care-related industry, occupation, or profession in this state.

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

(a) "Department" means the Department of Health.

(b) "License" has the same meaning as in s. 456.001(5).

(c) "Military-trained health care veteran" means a person who:

1. Has served within the preceding consecutive 12 months as an Army Combat Medic Specialist, a Navy or Fleet Marine Force Hospital Corpsman, an Air Force or Space Force Aerospace Medical Service Technician, or a Coast Guard Health Services Technician, or in other military positions similar to civilian X-ray technicians, dental assistants, medical assistants, or phlebotomists; and

2. Was discharged or separated from military service under conditions other than dishonorable or upgraded to an honorable discharge.

(d) "Participating health care provider" means:

1. A physician licensed under chapter 458 or an osteopathic physician licensed under chapter 459;

2. A professional corporation or partnership of physicians licensed under chapter 458 or osteopathic physicians licensed under chapter 459;

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3. A hospital or ambulatory surgical center licensed under chapter 395;

4. An office registered under s. 458.328 or s. 459.0138;

5. A commercial enterprise having medical facilities for its employees which are supervised by one or more physicians licensed under chapter 458 or osteopathic physicians licensed under chapter 459; or

6. A facility licensed under chapter 395 which offers medical services to the public and is supervised by one or more physicians licensed under chapter 458 or osteopathic physicians licensed under chapter 459.

(e) "Veteran" has the same meaning as in s. 1.01(14) and includes a former member of the Florida National Guard who was discharged or separated from service under conditions other than dishonorable or upgraded to an honorable discharge.

(3) ESTABLISHMENT.—The department, in collaboration with the Department of Veterans' Affairs, Florida Is For Veterans, Inc., and the Department of Economic Opportunity, may establish and administer the Military Corpsmen and Medics of Florida (MCMF) Program.

(4) PURPOSES.—The purposes of the MCMF Program include, but are not limited to, the following:

(a) Assisting military-trained health care veterans and their spouses in identifying and applying for health care-related employment and health care licensure and to connect veterans who have military health care training and who are seeking employment in health care fields with health care organizations seeking to hire dedicated, well-trained workers.

(b) Meeting the health care workforce demands of this state

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by facilitating access to training and education in health care and health care-related fields for veterans and their spouses and to promote the health care licensing programs provided by the state.

(c) Assisting military-trained health care veterans and their spouses in identifying health care and health care-related industries, occupations, and professions within this state which they may be immediately qualified to apply for, or apply for licensure for, based on previous civilian or military health care training.

(d) Assisting military-trained health care veterans and their spouses in identifying health care and health care-related education and training programs within this state which will recognize veterans' and their spouses' medical skills and allow such veterans and spouses to build on those skills in order to gain employment and work toward obtaining appropriate health care license as that term is defined in s 456.001(5).

(e) Assisting military-trained health care veterans and their spouses in identifying and applying for health care and health care-related employment and licensure programs.

(f) Meeting the health care workforce demands of this state by facilitating access to training and education in health care and health care-related fields and promoting health care licensing programs provided in this state.

(g) Assisting military-trained health care veterans and their spouses with licensure under ss. 456.024 and 456.0241, if applicable.

(5) PROGRAM COMPONENTS.—The MCMF Program shall consist of the following components:

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(a) The MCMF Program Office of Veterans Advocacy within the Department of Health.—

1. There is created within the department the MCMF Program Office of Veterans Advocacy.

2. The MCMF Program Office of Veterans Advocacy shall be headed by a MCMF Program Veterans' Advocate, who shall serve on a full-time basis and shall carry out its purposes and functions in accordance with state and federal law.

3. The MCMF Program Veterans' Advocate shall be designated by the department and must manage the development and maintenance of the program through ongoing collaboration with the United States Department of Defense, the Department of Veterans' Affairs, the Department of Economic Opportunity, Florida Is For Veterans, Inc., the Department of Education, and any other identified stakeholders to further the mission of the program.

4. The MCMF Program Veterans' Advocate must possess significant advocacy skills and an understanding of the following:

a. The Armed Services Vocational Aptitude Battery (ASVAB);

b. The Armed Forces Qualification Test (AFQT);

c. The Military Occupational Code (MOC) categories;

d. The training received by veterans in various MOC categories; and

e. The practice requirements of the various comparable department-recognized, licensed occupations and professions.

5. The duties of the MCMF Program Veterans' Advocate shall include, but are not limited to, the following:

a. Providing information, guidance, direction, and

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assistance as needed with the licensure application process or with expedited licensing, as appropriate, to military-trained health care veterans and their spouses transitioning into civilian health care and health care-related industries, occupations, and professions;

b. Providing specific information, on the department's website and in pamphlet format, for military-trained health care veterans and their spouses on health care and health care-related occupations and professions, including available statewide educational and training opportunities and resources for which such veterans and spouses may immediately qualify;

c. Providing guidance, direction, and assistance as needed, including specific information on the department's website and in pamphlet format, for military-trained health care veterans and their spouses on additional education and training required to obtain licensure for health care and health care-related occupations and professions and whether such veterans and spouses may qualify for expedited state licensure in the following health care and health care-related occupations:

(I) Licensed registered or practical nurse pursuant to ss. 464.008, 464.009, 464.0095, and 456.024;

(II) Optician under s. 484.007;

(III) Certain radiological personnel under part IV of chapter 468;

(IV) Emergency medical technician under ss. 401.23(11) and 401.27;

(V) Paramedic under ss. 401.23(17) and 401.27; and

(VI) Any other health care license type for which the department finds a military-trained health care veteran or his


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or her spouse needs guidance, direction, and assistance.

d. Referring any requests to the Department of Economic Opportunity to assist military-trained health care veterans and their spouses in resume writing and proofreading, job application completion, and interviewing skills and techniques.

(b) No veteran left behind.—Veterans who do not meet the definition of the term "military-trained health care veteran" but who have served in health care-related fields shall receive assistance from the MCMF Program through the Department of Economic Opportunity in resume writing, mentorship, and obtaining employment with participating health care providers.

(c) Health care leadership.—The MCMF Program through the Department of Economic Opportunity shall assist veterans and their spouses who have gained management experience or have completed an advanced degree in finding civilian health care leadership and management employment opportunities in a variety of health care and health care-related disciplines.

(d) Promote participating health care providers.—Florida Is For Veterans, Inc., in coordination with the Department of Economic Opportunity, the Department of Health, and the MCMF Program Office of Veterans Advocacy, shall work to fulfill the MCMF Program purposes as set forth in s. 295.126(2) and to recruit, establish, and maintain a statewide list of the MCMF Program participating health care providers as defined in s. 295.126(2)(d) which it will make available to the department, the MCMF Program Office, and veterans and their spouses upon request.

(6) FEES.—The department shall waive all application fees, certificate fees, and unlicensed activity fees for military-

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trained health care veterans and their spouses.

(7) RULEMAKING AUTHORITY.—The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section.

Section 2. Paragraph (g) is added to subsection (3) of section 295.22, Florida Statutes, to read:

295.22 Veterans Employment and Training Services Program.—

(3) ADMINISTRATION.—Florida Is For Veterans, Inc., shall administer the Veterans Employment and Training Services Program and perform all of the following functions:

(g) Collaborate with the Department of Health to implement the Military Corpsmen and Medics of Florida (MCMF) Program, in coordination with the Department of Economic Opportunity and the MCMF Program Office of Veterans Advocacy, to assist in fulfilling the purposes of the MCMF Program as set forth in s. 295.126(4). The corporation shall:

1. Recruit, establish, and maintain a statewide list, by geographical area, of MCMF Program participating health care providers as defined in s. 295.126(2)(d) in furtherance of the Legislature's intent to provide preference, priority, and available waivers to military-trained health care veterans and their spouses for certain educational requirements in hiring practices set forth in ss. 295.065, 295.07, 295.08, and 295.085. Participating health care providers shall agree to employ the MCMF Program participants, and Florida Is For Veterans, Inc., shall make the list available to military-trained health care veterans and their spouses upon request.

2. Assist participating health care providers in recruiting and hiring military-trained health care veterans and their spouses by connecting them with suitable applicants for

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employment.

3. Provide, through the Department of Economic Opportunity or the United States Department of Defense's SkillBridge program, instruction and proofreading for resume writing, training in interviewing skills, and assistance with application completion to military-trained health care veterans and their spouses.

4. Provide, through the Department of Economic Opportunity or the United States Department of Defense's SkillBridge program, mentorship services, including, but not limited to, tutoring in interviewing skills and techniques, to assist in obtaining employment with participating health care providers.

5. Assist the MCMF Program military-trained health care veterans and their spouses who hold an MCMF Military Apprentice License Health Care Certificate in identifying participating health care providers for potential employment, including providing assistance with resume writing, application completion, and interviewing skills.

6. Assist the MCMF Program military-trained health care veterans and their spouses, who have gained management experience or have completed an advanced degree in finding civilian health care leadership and management employment in a variety of health care and health care-related disciplines.

7. The Department of Economic Opportunity may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section.

Section 3. Section 1004.0963, Florida Statutes, is created to read:

1004.0963 Postsecondary credit for health care and health care-related military training and education courses.—

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(1) In consultation with the Department of Veterans' Affairs and the Department of Health, the Board of Governors shall adopt regulations, and the State Board of Education shall adopt rules, to create a process that enables eligible military-trained health care veterans as defined in s. 295.126(2)(c) to earn uniform postsecondary educational credit across all Florida public or private postsecondary educational institutions for college-level education and training acquired while serving in the military. The regulations and rules must include procedures for credential evaluation and the uniform award of postsecondary educational credit and career education academic and clinical clock hours, including, but not limited to, equivalency and alignment of military coursework with appropriate postsecondary educational courses and course descriptions. The regulations and rules must provide for procedures to develop systematically coordinated educational course equivalencies to be set out in the statewide articulation agreement required by s. 1007.23(1) which enable eligible military-trained health care veterans as defined in s. 295.126(2)(c) to earn uniform educational course credit and uniform academic and clinical clock hours across all Florida public colleges, universities, training schools, and training programs for the education and training acquired in the military.

(2) The Health Care Articulation Coordinating Committee shall convene a workgroup by July 15, 2023, which is responsible for developing a process for determining postsecondary educational course equivalencies and the minimum postsecondary educational credit for career education and academic or clinical clock hours which must be awarded for courses taken and


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occupations held by individuals during their service in the military.

(a) The workgroup shall be composed of the following members:

1. The chair of the Health Care Articulation Coordinating Committee or his or her designee, who shall serve as chair.

2. One member representing academic affairs administrators and faculty from state universities with expertise in health care and health care-related industries, occupations, and professions, appointed by the chair of the Board of Governors.

3. One member representing academic affairs administrators and faculty from Florida College System institutions with expertise in health care and health care-related industries, occupations, and professions, appointed by the chair of the State Board of Education.

4. One member representing faculty from career centers with expertise in health care and health care-related industries, occupations, and professions, appointed by the State Board of Education.

5. Two members representing veterans familiar with the Armed Services Vocational Aptitude Battery (ASVAB); the Armed Forces Qualification Test (AFQT); the Military Occupational Code (MOC) categories; and the training received by veterans in various MOC categories, appointed by the executive director of the Department of Veterans' Affairs.

6. Four faculty members appointed by the appropriate Department of Health boards, or by the department if there is no board, to represent public and private colleges, universities, training schools, and training programs of this state which

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train emergency medical technicians, opticians, paramedics, licensed practical nurses, registered nurses, and radiologic technologists, or other health care or health care-related industries, occupations, or professions as deemed appropriate by the department.

(b) The Office of K-20 Articulation shall provide administrative support for the workgroup.

(c) The workgroup shall establish a process for prioritizing and determining postsecondary educational course equivalencies and the minimum postsecondary educational credit or career education and academic and clinical clock hours that must be awarded for courses taken and training received for occupations performed by individuals during their service in the military. The workgroup shall provide recommendations to the Board of Governors and the State Board of Education by December 1, 2024, for approval at the next meeting of each board to allow for adequate public notice.

(d) Upon approval of the workgroup's recommendations, the Health Care Articulation Coordinating Committee must facilitate the review of courses taken and occupations held by individuals during their service in the military for postsecondary educational course equivalencies and the minimum postsecondary educational credit or career education and academic or clinical clock hours that must be awarded in accordance with the approved process.

(e) Within 1 year after approval of the workgroup's recommendations, the Health Care Articulation Coordinating Committee must approve a prioritized list of systematically coordinated postsecondary educational course equivalencies and

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the minimum postsecondary educational credit for military career education and training and academic and clinical clock hours that must be awarded for courses taken and occupations held by individuals during their service in the military. The list must be updated annually. The Board of Governors, the Department of Health boards or the department if there is no board, and the State Board of Education must timely adopt the list approved by the Health Care Articulation Coordinating Committee at the next meeting of each board to allow for adequate public notice. For the purpose of statewide application, postsecondary educational course equivalencies and the minimum postsecondary educational credit, career education, and academic and clinical clock hours that must be awarded for courses taken and the training received for occupations performed by individuals during service in the military must be delineated by the State Board of Education and the Board of Governors in the statewide articulation agreement required by s. 1007.23(1).

(f) State universities, Florida College System institutions, career centers, training schools, and training programs must award postsecondary educational credit and academic and clinical clock hours for courses taken and training received for occupations performed by individuals during service in the military based on the list adopted by the Board of Governors, the State Board of Education, and the Department of Health boards, or the department if there is no board, pursuant to paragraph (e) if the educational credit or career education and academic or clinical clock hours can be applied toward the student’s degree or certificate.

(g) Institutions may award additional postsecondary

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educational credit and academic and clinical clock hours, if appropriate. Educational credit or academic and clinical clock hours awarded in accordance with minimum postsecondary educational credit and academic or clinical clock hour requirements, respectively, are guaranteed to transfer to other state universities, Florida College System institutions, career centers, training schools, and training programs.

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to the Military Corpsmen and Medics of Florida (MCMF) Program; creating s. 295.126, F.S.; providing legislative intent; defining terms; establishing the MCMF Program; providing the purposes of the program; providing the components of the program; creating the MCMF Program Office of Veterans Advocacy within the Department of Health; providing that the program's Veterans' Advocate is the head of the office; providing qualifications of the advocate; prescribing duties of the advocate; requiring the MCMF Program through the Department of Economic Opportunity to assist certain veterans and their spouses with specified tasks; requiring Florida Is For Veterans, Inc., to coordinate with specified entities to fulfill the program's purposes and recruit, establish, and


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maintain a statewide list of participating health care providers; requiring the department to waive certain fees for specified veterans and their spouses; authorizing the department to adopt rules; amending s. 295.22, F.S.; requiring Florida Is for Veterans, Inc., to collaborate with specified entities to implement the MCMF program; prescribing functions to Florida Is For Veterans, Inc., related to the program; authorizing the Department of Economic Opportunity to adopt rules; creating s. 1004.0963, F.S.; requiring the Board of Governors and the State Board Of Education to consult with specified entities to adopt specified regulations and rules, respectively; requiring the Health Care Articulation Coordinating Committee to convene a workgroup by a specified date; providing responsibilities of the workgroup; providing the membership of the workgroup; requiring the Office of K-20 Articulation to provide administrative support to the workgroup; requiring the workgroup to provide certain recommendations to the Board of Governors and the Board of Education by a specified date; requiring the Health Care Articulation Coordinating Committee to approve a specified list of certain course equivalencies and credits for certain veterans; requiring the committee to annually update the list; requiring specified entities to annually adopt the updated list; providing applicability; requiring specified entities to award credit and clock hours for courses taken and training received by certain

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veterans under specified conditions; authorizing institutions to award additional credit or clock hours if appropriate; requiring specified entities to accept certain credit or clock hours earned by veterans under certain conditions; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2022	.	
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The Committee on Appropriations (Torres) recommended the following:

Senate Substitute for Amendment (501066) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 295.126, Florida Statutes, is created to read:

295.126 Military Corpsmen and Medics of Florida (MCMF) Program.—

(1) LEGISLATIVE INTENT.—It is the intent of the Legislature

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to assist military-trained health care veterans and their spouses in finding employment in this state's health care and health care-related industries, occupations, and professions as they transition to civilian life and to offer educational credit to military-trained health care veterans for their service in the United States military, to be applied toward the education and training required in this state to attain a health care or health care-related license to enter a health care or health care-related industry, occupation, or profession in this state.

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

(a) "Department" means the Department of Health.

(b) "License" has the same meaning as in s. 456.001(5).

(c) "Military-trained health care veteran" means a person who:

1. Has served within the preceding consecutive 12 months as an Army Combat Medic Specialist, a Navy or Fleet Marine Force Hospital Corpsman, an Air Force or Space Force Aerospace Medical Service Technician, or a Coast Guard Health Services Technician, or in other military positions similar to civilian X-ray technicians, dental assistants, medical assistants, or phlebotomists; and

2. Was discharged or separated from military service under conditions other than dishonorable or upgraded to an honorable discharge.

(d) "Participating health care provider" means:

1. A physician licensed under chapter 458 or an osteopathic physician licensed under chapter 459;

2. A professional corporation or partnership of physicians licensed under chapter 458 or osteopathic physicians licensed


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under chapter 459;

3. A hospital or ambulatory surgical center licensed under chapter 395;

4. An office registered under s. 458.328 or s. 459.0138;

5. A commercial enterprise having medical facilities for its employees which are supervised by one or more physicians licensed under chapter 458 or osteopathic physicians licensed under chapter 459; or

6. A facility licensed under chapter 395 which offers medical services to the public and is supervised by one or more physicians licensed under chapter 458 or osteopathic physicians licensed under chapter 459.

(e) "Veteran" has the same meaning as in s. 1.01(14) and includes a former member of the Florida National Guard who was discharged or separated from service under conditions other than dishonorable or upgraded to an honorable discharge.

(3) ESTABLISHMENT.—The department, in collaboration with the Department of Veterans' Affairs, Florida Is For Veterans, Inc., and the Department of Economic Opportunity, shall establish and administer the Military Corpsmen and Medics of Florida (MCMF) Program.

(4) PURPOSES.—The purposes of the MCMF Program include, but are not limited to, the following:

(a) Assisting military-trained health care veterans and their spouses in identifying and applying for health care-related employment and health care licensure and to connect veterans who have military health care training and who are seeking employment in health care fields with health care organizations seeking to hire dedicated, well-trained workers.

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(b) Meeting the health care workforce demands of this state by facilitating access to training and education in health care and health care-related fields for veterans and their spouses and to promote the health care licensing programs provided by the state.

(c) Assisting military-trained health care veterans and their spouses in identifying health care and health care-related industries, occupations, and professions within this state for which they may be immediately qualified to apply or apply for licensure based on previous civilian or military health care training.

(d) Assisting military-trained health care veterans and their spouses in identifying health care and health care-related education and training programs within this state which will recognize veterans' and their spouses' medical skills and allow such veterans and spouses to build on those skills in order to gain employment and work toward obtaining an appropriate health care license.

(e) Assisting military-trained health care veterans and their spouses with licensure under ss. 456.024 and 456.0241, if applicable.

(5) PROGRAM COMPONENTS.—The MCMF Program shall consist of the following components:

(a) *Office of Veterans Advocacy.*—

1. There is created within the department the MCMF Program Office of Veterans Advocacy.

2. The office shall be headed by a MCMF Program Veterans' Advocate, who shall serve on a full-time basis and shall carry out the purposes and functions of the office in accordance with



state and federal law.

3. The department shall designate the MCMF Program Veterans' Advocate, who shall manage the development and maintenance of the program through ongoing collaboration with the United States Department of Defense, the Department of Veterans' Affairs, the Department of Economic Opportunity, Florida Is For Veterans, Inc., the Department of Education, and any other identified stakeholders to further the mission of the program.

4. The MCMF Program Veterans' Advocate must possess significant advocacy skills and an understanding of the following:

a. The Armed Services Vocational Aptitude Battery;

b. The Armed Forces Qualification Test;

c. The Military Occupational Code (MOC) categories;

d. The training received by veterans in various MOC categories; and

e. The practice requirements of the various comparable department-recognized, licensed occupations and professions.

5. The duties of the MCMF Program Veterans' Advocate include, but are not limited to, the following:

a. Providing information, guidance, direction, and assistance as needed with the licensure application process or with expedited licensing, as appropriate, to military-trained health care veterans and their spouses transitioning into civilian health care and health care-related industries, occupations, and professions;

b. Providing specific information, including available statewide educational and training opportunities and resources



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for which military-trained health care veterans and their spouses may immediately qualify, on the department's website and in pamphlet format;

c. Providing guidance, direction, and assistance as needed, including specific information on the department's website and in pamphlet format, for military-trained health care veterans and their spouses on additional education and training required to obtain licensure for health care and health care-related occupations and professions and whether such veterans and spouses may qualify for expedited state licensure in the following health care and health care-related occupations:

(I) Licensed registered or practical nurse under ss. 464.008, 464.009, 464.0095, and 456.024;

(II) Optician under s. 484.007;

(III) Certain radiological personnel under part IV of chapter 468;

(IV) Emergency medical technician under ss. 401.23(11) and 401.27;

(V) Paramedic under ss. 401.23(17) and 401.27; and

(VI) Any other health care license type for which the department finds a military-trained health care veteran or his or her spouse needs guidance, direction, and assistance.

d. Referring any requests to the Department of Economic Opportunity to assist military-trained health care veterans and their spouses in resume writing and proofreading, job application completion, and interviewing skills and techniques.

(b) *No veteran left behind.*—Veterans who do not meet the definition of the term "military-trained health care veteran" but who have served in health care-related fields must receive

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assistance from the MCMF Program through the Department of Economic Opportunity in resume writing and proofreading, mentorship, and obtaining employment with participating health care providers.

(c) *Health care leadership.*—The MCMF Program, through the Department of Economic Opportunity, shall assist veterans and their spouses who have gained management experience or have completed an advanced degree in finding civilian health care leadership and management employment opportunities in a variety of health care and health care-related disciplines.

(d) *Promote participating health care providers.*—Florida Is For Veterans, Inc., in coordination with the Department of Economic Opportunity, the Department of Health, and the MCMF Program Office of Veterans Advocacy, shall work to fulfill the purposes of the program and to recruit, establish, and maintain a statewide list of the MCMF Program participating health care providers which it shall make available to the department, the MCMF Program, and veterans and their spouses upon request.

(6) FEES.—The department shall waive all application fees, certificate fees, and unlicensed activity fees for military-trained health care veterans and their spouses.

(7) RULEMAKING AUTHORITY.—The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section.

Section 2. Paragraph (g) is added to subsection (3) of section 295.22, Florida Statutes, to read:

295.22 Veterans Employment and Training Services Program.—

(3) ADMINISTRATION.—Florida Is For Veterans, Inc., shall administer the Veterans Employment and Training Services Program and perform all of the following functions:

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(g) Assist the Department of Health in fulfilling the purposes of the Military Corpsmen and Medics of Florida (MCMF) Program as set forth in s. 295.126(4). The corporation shall:

1. Recruit health care providers to participate in the MCMF Program and establish and maintain a statewide list, by geographical area, of such participating health care providers as defined in s. 295.126(2) in furtherance of the Legislature's intent to provide preference, priority, and available waivers to military-trained health care veterans as defined in s. 295.126(2) and their spouses for certain educational requirements in the hiring practices set forth in ss. 295.065, 295.07, 295.08, and 295.085. Florida Is For Veterans, Inc., shall make the list available to military-trained health care veterans and their spouses upon request.

2. Assist participating health care providers in recruiting and hiring military-trained health care veterans and their spouses by connecting such health care providers with suitable applicants for employment.

3. Assist a military-trained health care veteran participating in the program, or the veteran's spouse, in identifying participating health care providers for potential employment, including providing assistance with resume writing and proofreading, application completion, and interviewing skills. Florida Is For Veterans, Inc., may consult and coordinate with the Department of Economic Opportunity to make referrals for such assistance.

4. Assist the MCMF Program military-trained health care veterans and their spouses who have gained management experience or have completed an advanced degree in finding civilian health



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care leadership and management employment in a variety of health care and health care-related disciplines. Florida Is For Veterans, Inc., may consult and coordinate with the Department of Economic Opportunity to make referrals for such assistance.

Section 3. Section 1004.0963, Florida Statutes, is created to read:

1004.0963 Postsecondary credit for health care and health care-related military training and education courses.—

(1) As used in this section, the term "department boards" means any Department of Health board or the department if there is no board.

(2) In consultation with the Department of Veterans' Affairs and the Department of Health, the Board of Governors shall adopt regulations, and the State Board of Education shall adopt rules, to create a process that enables eligible military-trained health care veterans as defined in s. 295.126(2) to earn uniform postsecondary educational credit across all Florida public postsecondary educational institutions for college-level education and training acquired while serving in the military. The regulations and rules must include procedures for credential evaluation and the uniform award of postsecondary educational credit and career education academic and clinical clock hours, including, but not limited to, equivalency and alignment of military coursework with appropriate postsecondary educational courses and course descriptions. The regulations and rules must provide for procedures to develop systematically coordinated educational course equivalencies to be set out in the statewide articulation agreement required by s. 1007.23(1) which enable eligible military-trained health care veterans to earn uniform



educational course credit and uniform academic and clinical clock hours across all Florida public colleges, universities, training schools, and training programs for education and training acquired in the military.

(3) The Articulation Coordinating Committee shall convene a workgroup by July 15, 2023, which is responsible for developing a process for determining postsecondary educational course equivalencies and the minimum postsecondary educational credit for career education and academic and clinical clock hours which must be awarded for courses taken and occupations performed by individuals during their service in the military.

(a) The workgroup shall be composed of the following members:

1. The chair of the Articulation Coordinating Committee or his or her designee, who shall serve as chair.

2. One member representing academic affairs administrators and faculty from state universities with expertise in health care and health care-related industries, occupations, and professions, appointed by the chair of the Board of Governors.

3. One member representing academic affairs administrators and faculty from Florida College System institutions with expertise in health care and health care-related industries, occupations, and professions, appointed by the chair of the State Board of Education.

4. One member representing faculty from career centers with expertise in health care and health care-related industries, occupations, and professions, appointed by the State Board of Education.

5. Two members representing veterans familiar with the

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Armed Services Vocational Aptitude Battery; the Armed Forces Qualification Test; the Military Occupational Code (MOC) categories; and the training received by veterans in various MOC categories, appointed by the executive director of the Department of Veterans' Affairs.

6. Four faculty members appointed by the appropriate department boards to represent state universities, Florida College System institutions, career centers, training schools, and training programs of this state which train emergency medical technicians, opticians, paramedics, licensed practical nurses, registered nurses, and radiologic technologists, or other health care or health care-related industries, occupations, or professions as deemed appropriate by the department.

(b) The Office of K-20 Articulation shall provide administrative support for the workgroup.

(c) The workgroup shall establish a process for prioritizing and determining postsecondary educational course equivalencies and the minimum postsecondary educational credit or career education and academic and clinical clock hours that must be awarded for courses taken and training received for occupations performed by individuals during their service in the military. The workgroup shall provide recommendations to the Board of Governors and the State Board of Education by December 1, 2024, for approval at the next meeting of each board to allow for adequate public notice.

(d) Upon approval of the workgroup's recommendations, the Articulation Coordinating Committee must facilitate the review of courses taken and occupations performed by individuals during

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their service in the military for postsecondary educational course equivalencies and the minimum postsecondary educational credit or career education and academic and clinical clock hours that must be awarded in accordance with the approved process.

(e) Within 1 year after approval of the workgroup's recommendations, the Articulation Coordinating Committee must approve a prioritized list of systematically coordinated postsecondary educational course equivalencies and the minimum postsecondary educational credit for military career education and training and academic and clinical clock hours that must be awarded for courses taken and occupations performed by individuals during their service in the military. The list must be updated annually. The Board of Governors, the department boards, and the State Board of Education must timely adopt the list approved by the Articulation Coordinating Committee at the next meeting of each board to allow for adequate public notice. For the purpose of statewide application, postsecondary educational course equivalencies and the minimum postsecondary educational credit, career education, and academic and clinical clock hours that must be awarded for courses taken and the training received for occupations performed by individuals during service in the military must be delineated by the State Board of Education and the Board of Governors in the statewide articulation agreement required by s. 1007.23(1).

(f) State universities, Florida College System institutions, career centers, training schools, and training programs must award postsecondary educational credit and academic and clinical clock hours for courses taken and training received for occupations performed by individuals during service

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in the military based on the list adopted by the Board of Governors, the State Board of Education, and the department boards pursuant to paragraph (e) if the educational credit or career education and academic and clinical clock hours can be applied toward the student's degree or certificate.

(g) Postsecondary institutions may award additional educational credit and academic and clinical clock hours, if appropriate. Educational credit or academic and clinical clock hours awarded in accordance with minimum postsecondary educational credit and academic and clinical clock hour requirements, respectively, are guaranteed to transfer to other state universities, Florida College System institutions, career centers, training schools, and training programs.

(h) The Articulation Coordinating Committee may form a subcommittee to carry out the committee's duties under this subsection.

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to the Military Corpsmen and Medics of Florida (MCMF) Program; creating s. 295.126, F.S.; providing legislative intent; defining terms; establishing the MCMF Program; providing the purposes of the program; providing the components of the program; creating the MCMF Program Office of Veterans

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Advocacy within the Department of Health; providing that the MCMF Program Veterans' Advocate is the head of the office; providing qualifications of the advocate; prescribing duties of the advocate; requiring the MCMF Program, through the Department of Economic Opportunity, to assist certain veterans and their spouses with specified tasks; requiring Florida Is For Veterans, Inc., to coordinate with specified entities to fulfill the program's purposes and recruit, establish, and maintain a statewide list of participating health care providers; requiring the department to waive certain fees for specified veterans and their spouses; authorizing the department to adopt rules; amending s. 295.22, F.S.; requiring Florida Is for Veterans, Inc., to collaborate with specified entities to implement the MCMF Program; specifying duties of Florida Is For Veterans, Inc., related to the program; creating s. 1004.0963, F.S.; defining the term "department boards"; requiring the Board of Governors and the State Board Of Education, in consultation with specified entities, to adopt specified regulations and rules, respectively; requiring the Articulation Coordinating Committee to convene a workgroup by a specified date; providing responsibilities of the workgroup; providing the membership of the workgroup; requiring the Office of K-20 Articulation to provide administrative support to the workgroup; requiring the workgroup to establish a specified process for prioritizing and determining


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certain course equivalencies and minimum credit or clock hours awarded to certain individuals; requiring the workgroup to provide certain recommendations to the Board of Governors and the State Board of Education by a specified date; requiring the Articulation Coordinating Committee to approve a specified list of certain course equivalencies and credits and clock hours for certain veterans; requiring the committee to annually update the list; requiring specified entities to annually adopt the updated list; providing applicability; requiring specified entities to award credit and clock hours for courses taken and training received by certain veterans under specified conditions; authorizing postsecondary institutions to award additional credit or clock hours if appropriate; providing that certain credit or clock hours earned by veterans under certain conditions are guaranteed to transfer to specified entities; authorizing the Articulation Coordinating Committee to form a certain subcommittee; providing an effective date.

By the Committee on Health Policy; and Senators Torres, Wright, Book, Taddeo, Stewart, Jones, Cruz, Rouson, Gibson, Powell, Ausley, Bracy, Burgess, and Harrell

588-01990-22 2022466c1

A bill to be entitled

An act relating to the Military Medics and Corpsmen of Florida program; creating s. 295.126, F.S.; defining terms; authorizing the Department of Health to establish the Military Medics and Corpsmen of Florida (MMACOF) program in collaboration with Florida Is For Veterans, Inc.; providing the purpose of MMACOF; providing the components of the program; requiring Florida Is For Veterans, Inc., to recruit and review the eligibility of certain veterans for the program; requiring Florida Is For Veterans, Inc., to assist certain veterans with certain applications; requiring the department to waive certain fees for such applicants; providing application requirements; requiring certain disclosures by an applicant; requiring Florida Is For Veterans, Inc., to recruit, establish, and maintain a statewide list of participating health care providers; requiring the participating health care providers to agree to specified terms; requiring Florida Is For Veterans, Inc., to assist such veterans with identifying and applying to a participating health care providers for employment; requiring the Board of Medicine to determine the areas in which such veterans are eligible to practice; requiring the board to specify which skills such veterans may practice under direct supervision; requiring the board to place such veterans in a specified status if certain conditions are met; requiring the department to provide such

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

588-01990-22 2022466c1

veterans with specified information; providing that a certain status expires within a certain timeframe if not renewed before a specified date; requiring certain veterans to provide specified information to the department; authorizing the department to issue a certain certificate to such veterans under specified conditions; providing that such certificate is valid for a certain timeframe subject to specified conditions; requiring the department to provide by rule a method to renew such certificate; requiring such veterans to provide the department specified information within a certain timeframe after employment; requiring a certificateholder to provide Florida Is For Veterans, Inc., with specified information within a certain timeframe; requiring participating health care providers to provide certain information to the department and to Florida Is For Veterans, Inc., within a certain timeframe; requiring certain education and training programs to provide the department and Florida Is For Veterans, Inc., with specified information within a specified timeframe; providing acts that are grounds for denial of a certificate or disciplinary action; authorizing the department or the board to enter certain orders; prohibiting the department or the board from issuing or reinstating a certificate until certain conditions are met by the veteran; requiring the board to adopt rules relating to disciplinary action; providing that veterans who do not meet program requirements may

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receive certain assistance from the program; requiring the program to assist veterans and their spouses with obtaining certain employment; authorizing the department and the board to adopt rules; amending s. 295.21, F.S.; providing the purpose for a health care service program for veterans through Florida Is For Veterans, Inc.; providing an effective date.

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

Section 1. Section 295.126, Florida Statutes, is created to read:

295.126 Military Medics and Corpsmen of Florida (MMACOF) program.—

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

(a) "Department" means the Department of Health.

(b) "Military-trained health care veteran" means a person who:

1. Has served within the preceding consecutive 12 months as a medic in the United States Army, a medical technician in the United States Air Force, a hospital corpsman in the United States Navy, or a health services technician in the United States Coast Guard;

2. Was discharged or separated from military service under conditions other than dishonorable;

3. Has received "MMACOF Health Care Program Qualified" status from the department under paragraph (3)(a);

4. Is enrolled, on at least a half-time basis, in an approved and accredited Florida health care education and

training program specific to the health care field for which the department has issued the veteran his or her "MMACOF Health Care Program Qualified" status; and

5. Has applied for and received approval from the department for the MMACOF Health Care Certification program.

(c) "Participating health care provider" means:

1. A physician licensed under chapter 458 or an osteopathic physician licensed under chapter 459;

2. A professional corporation or partnership of physicians licensed under chapter 458 or osteopathic physicians licensed under chapter 459;

3. A hospital or ambulatory surgical center licensed under chapter 395;

4. An office registered under s. 458.328 or s. 459.0138;

5. A commercial enterprise having medical facilities for its employees, which are supervised by one or more physicians licensed under chapter 458 or osteopathic physicians licensed under chapter 459; or

6. A facility licensed under chapter 395 which offers medical services to the public and is supervised by one or more physicians licensed under chapter 458 or osteopathic physicians licensed under chapter 459.

(d) "Veteran" has the same meaning as in s. 1.01(14) or means a former member of the Florida National Guard.

(2) PROGRAM ESTABLISHMENT AND PURPOSES.—The department, in collaboration with Florida Is For Veterans, Inc., may establish and administer the Military Medics and Corpsmen of Florida (MMACOF) program. The purpose of the program is to offer clinical, leadership, and nonclinical career pathways to

veterans and their spouses seeking careers in health care or health care-related fields within this state.

(3) PROGRAM COMPONENTS.—The MMACOF program shall consist of the following components:

(a) *MMACOF Health Care Certification program.*—

1. Florida Is For Veterans, Inc., shall recruit and review the military eligibility of veterans according to the military requirements for acceptance into the MMACOF Health Care Certification program.

2. Florida Is For Veterans, Inc., shall assist each individual veteran in completing a department MMACOF Health Care Certification program application form, which must be developed by the department and each board, or the department if there is no board. The department shall waive the application fee, certificate fee, and unlicensed activity fee for such applicants.

3. The MMACOF Health Care Certification program application must include, but is not limited to, the following information:

a. The individual's civilian and military education; health care education and training; a list of practice skills regularly performed in the military during service as a medic in the United States Army, a medical technician in the United States Air Force, a hospital corpsman in the United States Navy, or a health services technician in the United States Coast Guard; and any other health care-related education or experience the individual has received as a civilian or as an active duty servicemember; and

b.(I) A disclosure by the MMACOF Health Care Certification program applicant stating whether he or she is currently

enrolled, on at least a half-time basis, in an approved and accredited Florida health care education and training program for a specified health care practice area listed in subparagraph 6., and the status of that enrollment; or

(II) If the MMACOF Health Care Certification program applicant is not currently enrolled in an approved and accredited Florida health care education and training program, the applicant's preference for the health care practice area in which he or she seeks to pursue future education and training and, if known, which approved and accredited Florida health care education and training program he or she plans to enter under the MMACOF Health Care Certification program.

4. Florida Is For Veterans, Inc., shall recruit, establish, and maintain a statewide list of MMACOF Health Care Certification program participating health care providers. Participating health care providers must agree to employ unlicensed but military-trained health care veterans who hold an MMACOF Health Care Certificate in specific health care fields; are qualified to perform specific health care skills under the direct supervision of a licensed health care provider in the specific field, and are enrolled on at least a half-time basis in an approved and accredited Florida health care education and training program for the health care field specified on the veteran's MMACOF Health Care Certificate.

5. Florida Is For Veterans, Inc., shall assist veterans who hold an MMACOF Health Care Certificate in identifying participating health care providers for potential employment, including providing assistance with resume writing, application completion, and interviewing skills.

6. The Board of Medicine shall review, in consultation with any other professional board it deems appropriate, each veteran's individual MMACOF Health Care Certification program application and, based on criteria set forth in board rule, shall determine within 30 days in which of the following health care practice areas the individual veteran is eligible to practice under the direct supervision of a health care practitioner, as defined by the specific profession's practice act, while the veteran is enrolled on at least a half-time basis in an approved and accredited Florida health care education and training program for one of the following practice areas:

a. Certified nursing assistant;

b. Dental assistant;

c. Dental hygienist;

d. Emergency medical technologist;

e. Licensed practical nurse;

f. Laboratory technologist;

g. Medical assistant;

h. Optician;

i. Physician assistant;

j. Occupational therapy assistant;

k. Radiologic technologist;

l. Registered nurse;

m. Respiratory care or therapy technician;

n. Paramedic;

o. Pharmacy technician;

p. Physical therapist assistant; or

q. Physical therapist.

7. The Board of Medicine shall delineate the practice

skills that the military-trained health care veteran is permitted to perform under the direct supervision of a licensed health care practitioner in the field in which the veteran is to practice.

8. Once the Board of Medicine has determined from the information submitted by the MMACOF Health Care Certification program applicant that he or she has sufficient civilian or military health care education and training in one or more health care practice areas set out in subparagraph 6., the veteran's application shall be given "MMACOF Health Care Program Qualified" status, and the veteran shall be notified of this status in writing within 14 days. The department must also provide the veteran with a list of practice skills the Board of Medicine has determined he or she has experience to perform under direct supervision when employed by a participating health care provider after obtaining his or her MMACOF Health Care Certificate. The notification to the veteran of "MMACOF Health Care Program Qualified" status must include instructions on how the veteran may obtain an MMACOF Health Care Certificate.

9. The Board of Medicine's initial determination of the veteran's "MMACOF Program Health Care Qualified" status expires 18 months after its first issuance, unless the veteran applies for an MMACOF Health Care Certificate before the expiration date.

10. To obtain an MMACOF Health Care Certificate, a veteran whose MMACOF Health Care Certification application is in "MMACOF Program Health Care Qualified" status must provide to the department documentation of his or her enrollment on at least a half-time basis, signed by the registrar or similar

representative of the approved and accredited Florida health care education and training program, for his or her approved health care field on a form or in the manner prescribed by department rule.

11. Upon receipt by the department of the veteran's proof of at least half-time enrollment in an approved and accredited Florida health care education and training program for the health care field for which the veteran is "MMACOF Program Health Care Qualified," the department may issue to the veteran an MMACOF Health Care Certificate that qualifies the unlicensed veteran for employment with a participating health care provider in a position matching the health care field listed on the veteran's MMACOF Health Care Certificate.

12. The veteran's MMACOF Health Care Certificate is valid for the length of time the veteran remains actively enrolled on at least a half-time basis in an approved and accredited Florida health care education and training program, and he or she may continue to practice the skills approved by the Board of Medicine in a participating civilian health care provider setting while enrolled on at least a one-half time basis in an accredited and approved Florida health care educational and training program or accredited nursing program, as provided by s. 464.019(4)(a).

13. The department shall provide by rule a method for annual renewal of military-trained health care veterans' MMACOF Program Health Care Certifications.

14. A MMACOF Health Care Certificateholder must provide the department and Florida Is For Veterans, Inc., with the following information within 10 days after civilian employment under his

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or her MMACOF Health Care Certificate with a participating health care provider:

a. The name, address, and telephone number of the participating health care provider that employs the military-trained health care veteran; and

b. The name and phone number of a contact health care provider who is responsible for supervising the military-trained health care veteran and who shall be in possession of a copy of the list of practice skills for which the board has determined the military-trained health care veteran has sufficient experience to perform under supervision with his or her MMACOF Health Care Certificate.

15. An MMACOF Health Care Certificateholder must notify the department and Florida Is For Veterans, Inc., in writing within 10 days after:

a. The military-trained health care veteran's termination of his or her employment with a participating health care provider; or

b. The military-trained health care veteran's failure to remain in or maintain active enrollment on at least a half-time basis in an approved and accredited Florida health care education and training program.

16. A participating health care provider that employs a military-trained health care veteran in any capacity must notify the department and Florida Is For Veterans, Inc., in writing within 10 days after the employment termination of a military-trained health care veteran, including the reasons for the termination.

17. An approved and accredited Florida health care

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education and training program that has enrolled a military-trained health care veteran who holds a MMACOF Health Care Certificate and who is employed by a participating health care provider must notify the department and Florida Is For Veterans, Inc., in writing within 10 days after the:

a. Termination of the military-trained health care veteran's enrollment from the approved and accredited Florida health care education and training program for any reason, specifying the reasons for termination;

b. Military-trained health care veteran's enrollment dropping below a half-time basis; or

c. Military-trained health care veteran's class absences being of sufficient number to cause the military-trained health care veteran to drop or fail classes, dropping his or her enrollment to less than a half-time basis.

18. The following acts constitute grounds for denial of an MMACOF Health Care Certificate or disciplinary action, as specified in s. 456.072(2):

a. Obtaining or attempting to obtain an MMACOF Health Care Certificate by bribery, fraud, or knowing misrepresentation.

b. Having an MMACOF Health Care Certificate revoked, suspended, or otherwise acted against, including denial, in another jurisdiction.

c. Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to practicing as a military-trained health care veteran under an MMACOF Health Care Certificate.

d. Willfully making or filing a false report or record,

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willfully failing to file a report or record that directly relates to practicing as a military-trained health care veteran under an MMACOF Health Care Certificate, or willfully impeding or obstructing the filing of a report or record required by another person.

e. Circulating false, misleading, or deceptive advertising.

f. Engaging in unprofessional conduct, including any departure from or failure to conform to acceptable standards related to practicing as a military-trained health care veteran under an MMACOF Health Care Certificate.

g. Engaging or attempting to engage in the illegal possession, sale, or distribution of any illegal or controlled substance.

h. Willfully failing to report any known violation of chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 462; chapter 463; chapter 464; chapter 465; chapter 466; chapter 467; part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468; chapter 478; chapter 480; part I, part II, or part III of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491.

i. Engaging in the delivery of military-trained health care skills without an active MMACOF Health Care Certificate.

j. Failing to perform any statutory or legal obligation placed upon a military-trained health care veteran.

k. Accepting and performing professional responsibilities that the certificateholder knows, or has reason to know, he or she is not competent to perform.

l. Delegating military-trained health care skills to a person the certificateholder knows, or has reason to know, is

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unqualified by training, experience, or licensure to perform.

m. Being judicially determined mentally incompetent.

n. Being unable to practice as a military-trained health care veteran with reasonable skill and safety because of a mental or physical condition or illness or the use of alcohol, controlled substances, or any other substance that impairs one's ability to practice.

o. Disclosing the identity of or information about a patient without written permission, except for information that does not identify a patient and is used for training purposes in an approved training program.

p. Violating any provision of this section or chapter 456, or any rules adopted pursuant thereto.

q. The department may, upon probable cause, compel a certificateholder to submit to a mental or physical examination by physicians designated by the department. The cost of an examination shall be borne by the certificateholder, and his or her failure to submit to such an examination shall constitute an admission of the allegations against him or her, consequent upon which a default and a final order may be entered without the taking of testimony or presentation of evidence, unless the failure was due to circumstances beyond his or her control.

r. A certificateholder disciplined under this paragraph shall, at reasonable intervals, be afforded an opportunity to demonstrate that he or she can resume the practice as a military-trained health care veteran with reasonable skill and safety.

s. In any proceeding under this subparagraph, the record of proceedings or the orders entered by the board may not be used

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against a certificateholder in any other proceeding.

19. The department or Board of Medicine may enter an order denying certification or imposing any of the penalties in s. 456.072(2) against any applicant for certification who is found guilty of any of the violations specified in s. 456.072(1).

20. The department or Board of Medicine may not issue or reinstate a military-trained health care veteran's MMACOF Health Care Certificate to a person it deemed unqualified until it is satisfied that such person has complied with the terms and conditions of the final order and that the certificateholder can safely practice as a military-trained health care veteran.

21. The Board of Medicine may, by rule, establish guidelines for the disposition of disciplinary cases involving specific violations. The guidelines may include minimum and maximum fines, periods of supervision during probation, or conditions upon probation or reissuance of a military-trained health care veteran's MMACOF Health Care Certificate.

(b) *No Veteran Left Behind.*—Veterans who do not meet the definition of the term "military-trained health care veteran" but who have served in health care-related fields shall receive assistance from the MMACOF program in resume writing, mentorship, and obtaining employment with participating health care providers.

(c) *Health Care Leadership.*—The MMACOF program shall assist veterans and their spouses, in the course of the veterans' military service, who have gained management experience or have completed any advanced degree in finding civilian health care leadership and management employment in a variety of health care disciplines.

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(4) RULEMAKING AUTHORITY.—The department and the Board of Medicine may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section.

Section 2. Subsection (2) of section 295.21, Florida Statutes, is amended to read:

295.21 Florida Is For Veterans, Inc.—

(2) PURPOSE.—

(a) The purpose of the corporation is to promote Florida as a veteran-friendly state that seeks to provide veterans with employment opportunities and that promotes the hiring of veterans by the business community. The corporation shall encourage retired and recently separated military personnel to remain in the state or to make the state their permanent residence. The corporation shall promote the value of military skill sets to businesses in the state, assist in tailoring the training of veterans to match the needs of the employment marketplace, and enhance the entrepreneurial skills of veterans.

(b) A subprogram dedicated to health care services employment may be created under the Veterans Employment and Training Services Program. The purpose of the health care service program is to link veterans who have armed service health care training and who are seeking employment in health care fields to health care organizations seeking to hire dedicated, well-trained workers. The program is to meet the health care workforce demands of this state by facilitating access to training and education in health fields for veterans and to promote the health care licensing programs provided by the state.

Section 3. This act shall take effect July 1, 2022.

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The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 15, 2022

I respectfully request that **Senate Bill #466**, relating to Military Medics and Corpsmen of Florida Program, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Victor M. Torres, Jr.
Florida Senate, District 15

File signed original with committee office

The Florida Senate

APPEARANCE RECORD

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

2/28/22
Meeting Date

Approps
Committee

SB 466
Bill Number or Topic

Amendment Barcode (if applicable)

Name Joe Marino

Phone 8503222093

Address 930 Thomasville Rd #100
Street

Email marino@veteransflorida.org

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: Veterans Florida (Florida is for Veterans Inc)

☐ 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

2/28/2022	SB 466
Meeting Date	Bill Number or Topic
Appropriations	
Committee	Amendment Barcode (if applicable)

Name "Hammer" Hartsell, Major General, USMC (ret)

Phone 850-487-1533

Address 400 S. Monroe Street
Street

Email BAsztalos@FDVA.STATE.FL.US

Tallahassee FL 32399
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida Department of Veterans' Affairs

☐ 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 Appropriations

BILL:	SB 536
INTRODUCER:	Senator Diaz
SUBJECT:	Administrative Procedures
DATE:	February 25, 2022
REVISED:	2/28/22

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Favorable**
2.	Davis	Sadberry	AP	**Fav/1 amendment**
3.			RC	

Please see Section IX. for Additional Information:

AMENDMENTS - Significant amendments were recommended

I. Summary:

SB 536 amends the Administrative Procedures Act (APA). The APA contains a uniform set of procedures that agencies must follow when exercising rulemaking authority delegated by the Legislature. This bill amends the APA rulemaking process and provides a new mechanism for agencies to review, revise, and repeal their rules. The bill:

- Requires each agency to review its rules for consistency with the powers and duties granted by the agency's enabling statutes. If, after reviewing a rule, the agency determines substantive changes to update a rule are not required, the agency must repromulgate the rule.
- Specifies the economic impacts and compliance costs an agency must consider in creating a statement of estimated regulatory costs (SERC). Each agency is required to have a website where each of its SERCs may be viewed in their entirety.
- Requires an agency, in all notices of rulemaking which include material incorporated by reference, to submit the incorporated material in the prescribed electronic format to the Department of State with the full text available for free public access through an electronic hyperlink.
- Requires changes to material incorporated by reference to be in a strike-through and underline format.
- Requires the annual regulatory plan to identify and describe each rule, by rule number or proposed rule number, which the agency expects to develop, adopt, or repeal for the 12-month period beginning October 1 and ending September 30. The bill also requires the annual regulatory plan to contain a declaration that the agency head and the general counsel understand that regulatory accountability is necessary to ensure public confidence in the

integrity of state government and to that end the agency is diligently working toward lowering the total number of rules adopted.
- Specifies that an adverse impact on small business exists if certain specific criteria is met.
- Specifies that a lower cost regulatory alternative may be submitted after a notice of proposed rule *or* a notice of change.
- Defines the term "technical change" and requires technical changes to be documented in the history of the rule.
- Requires a notice of rule development and a notice of proposed rule to include the proposed rule number.
- Requires a period of at least seven days between the publication of a notice of rule development and a notice of proposed rule.
- Requires the Joint Administrative Procedures Committee to review all existing rules.

The bill may have a negative fiscal impact on state government. However, the impact is indeterminate and not expected to impact agencies until a late date. See Section V, Fiscal Impact Statement.

II. Present Situation:

The Administrative Procedures Act - Overview

The Administrative Procedure Act, which is commonly referred to as the "APA," is contained in ch. 120, F.S. The first version of the APA was adopted in 1961 in an attempt to produce a comprehensive and uniform administrative process, or framework, to govern executive branch agency actions. The "modern version" of the APA was adopted in 1974 and is amended almost every year. In addition to creating a standardized process for agencies to enact rules and issue orders, the APA also provides citizens the opportunity to be involved and challenge agency decisions.[1]

The Florida Constitution vests in the Legislature the sole authority to create laws.[2] However, the Legislature may delegate to agencies in the executive branch the quasi-legislative ability, or authority, to create rules and not be in violation of the separation of powers doctrine. Almost 100 years ago, in 1930, the Florida Supreme Court noted

> The Legislature is in session only during limited periods, and statutes cannot always anticipate and provide for complicated and contingent conditions in governmental affairs; therefore functions that are quasi legislative in their nature are with appropriate limitations conferred by statute upon administrative officers to effectuate the statutory purpose.[3]

The Legislature establishes the regulatory program to be implemented and the agencies supply the details. Even though rules are created by executive agencies, it is the legislative branch that

[1] Joint Administrative Procedures Committee, *A Primer on Florida's Administrative Procedure Act*, 1 (2020), https://www.japc.state.fl.us/Documents/Publications/PocketGuideFloridaAPA.pdf.
[2] FLA. CONST. art. III, s. 1.
[3] *Florida Motor Lines, Inc., v. Railroad Commissioners*, 129 So. 876, 881 (Fla. 1930), and note 1, *supra*.

maintains ownership over the product that is eventually adopted and promulgated.[4] When the Legislature enacts statutes granting power to the executive branch, the statutes "must clearly announce adequate standards to guide…in the execution of the powers delegated."[5]

The First District Court of Appeal noted in *Gopman v. Department of Education*,[6] that the APA "presumptively governs the exercise of all authority statutorily vested in the executive branch of state government." Accordingly, the APA is the "mechanism used by state agencies to adopt rules."[7]

A detailed description of the present situation for each section of the bill is included in the "Effect of Proposed Changes" section of this bill analysis.

III. Effect of Proposed Changes:

Rulemaking

Present Situation

Delegation of Authority

The Legislature, as the sole branch of government having the inherent power to create laws,[8] may delegate to agencies in the executive branch the quasi-legislative ability, or authority, to create rules.[9] As the Florida Supreme Court has noted

> Rulemaking is a derivative of lawmaking. An agency is empowered to adopt rules if two requirements are satisfied. First, there must be a statutory grant of rulemaking authority, and second, there must be a specific law to be implemented.[10]

The Administrative Procedure Act (APA)[11] sets forth the uniform set of procedures agencies must follow when exercising delegated rulemaking authority.

Rules

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.[12]

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[4] Joint Administrative Procedures Committee, The Florida Legislature, *An Overview of Chapter 120 Rulemaking*, (Jan. 28, 2021) (on file with the Senate Committee on Judiciary).
[5] *Bush v. Schiavo*, 885 So. 2d 321, 332 (Fla. 2004) quoting *Lewis v. Bank of Pasco County*, 346 So. 2d 53, 55-56 (Fla 1976).
[6] *Gopman v. Dep't of Educ.,* 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005).
[7] *See supra* note 4.
[8] FLA. CONST. art. III, s. 1; *see also* FLA. CONST. art. II, s. 3.
[9] *See Whiley v. Scott*, 79 So. 3d 702, 710 (Fla. 2011),
[10] *Id*.
[11] Chapter 120, F.S.
[12] Section 120.52(16), F.S.

Rulemaking Authority

Rulemaking authority is delegated by the Legislature through statute and authorizes agencies to "adopt, develop, establish, or otherwise create"[13] rules. Usually, the Legislature delegates rulemaking authority to a given agency because an agency has "expertise in a particular area for which they are charged with oversight."[14] Agencies do not have the discretion in and of themselves to engage in rulemaking.[15] To adopt a rule, an agency must have a general grant of authority to implement a specific law by rulemaking.[16] The grant of rulemaking authority itself need not be detailed. The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[17]

Rulemaking Process – Filing a Notice of Rule Development

An agency begins the formal rulemaking process[18] by filing a notice of rule development of proposed rules in the Florida Administrative Register (FAR) indicating the subject area to be addressed by the rule development and including a short, plain explanation of the purpose and effect of the proposed rule.[19] The notice may include the preliminary text of the proposed rule, but it is not necessary. Such notice is required for all rulemaking, except for rule repeals.

Rulemaking Process – Filing a Notice of Proposed Rule

Next, an agency must file, upon approval of the agency head, a notice of proposed rule.[20] The notice of proposed rule is published by the Department of State (DOS) in the FAR[21] and must contain the full text of the proposed rule or amendment and a summary thereof.[22] Before 2012, the FAR was published weekly, resulting in a period of at least seven days between the publication of a notice of rule development and a notice of proposed rule.[23] In 2012, the Legislature passed HB 541 (2012) that changed the FAR from a weekly publication to a publication that is continuously revised and, as a result, eliminated the seven-day period between the two notices.[24]

Agency Hearing

After publication of a notice of proposed rule, an agency must hold a hearing on the proposed rule if a person requests a hearing within 21 days.[25] If, after the hearing is held or after the time for requesting a hearing has expired, the agency does not change the rule, other than a technical

[13] Section 120.52(17), F.S.
[14] *Whiley v. Scott*, 79 So. 3d 702, 711 (Fla. 2011).
[15] Section 120.54(1)(a), F.S.
[16] Sections 120.52(8) and 120.536(1), F.S.
[17] *Sloban v. Fla. Bd. of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Bd. of Trustees of the Internal Improvement Trust Fund v. Day Cruise Assoc., Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[18] Alternatively, a person regulated by an agency or having a substantial interest in an agency rule may petition the agency to adopt, amend, or repeal a rule. Section 120.54(7)(a), F.S.
[19] Section 120.54(2)(a), F.S.
[20] Section 120.54(3), F.S.
[21] Section 120.55(1)(b), F.S.
[22] Section 120.54(3)(a)1., F.S.
[23] Chapter 2012-63, Laws of Fla.
[24] *Id.*
[25] Section 120.54(3)(c), F.S.

change, the agency must file a notice stating no changes have been made to the rule with the Joint Administrative Procedures Committee (JAPC) at least seven days before filing the rule for adoption.[26] However, if a hearing is requested, the agency may, based upon the comments received at the hearing, publish a notice of change.[27]

Petition Alternative

As an alternative to the agency initiated process delineated above, a person regulated by the agency or having a substantial interest in an agency rule may petition the agency to adopt, amend, or repeal a rule.[28] The petitioner must specify the proposed rule and action requested.[29] The agency can either initiate rulemaking or decline to do so; however, if the agency chooses the latter, it must issue a written statement of the reasons for the denial.[30]

Rule Adoption

Once an agency has completed the steps of rulemaking, the agency may file for rule adoption with the DOS and the rule becomes effective 20 days later, unless a different date is indicated in the rule.[31] Most adopted rules are published in the Florida Administrative Code (FAC).[32]

Challenging a Rule for Invalid Delegation of Authority

The validity of a rule or a proposed rule may be challenged at the Division of Administrative Hearings (DOAH)[33] as an invalid delegation of legislative authority.[34] An invalid delegation of legislative authority is an action that goes beyond the powers, functions, and duties delegated by the Legislature.[35] A rule or proposed rule is an invalid delegation of legislative authority if any of the following applies:

- The agency has materially failed to follow the rulemaking procedures or requirements in the APA.
- The agency has exceeded its grant of rulemaking authority.
- The rule enlarges, modifies, or contravenes the specific provisions of the law implemented.
- The rule is vague, fails to establish adequate standards for agency decisions, or vests the agency with unbridled discretion.
- The rule is arbitrary or capricious.

[26] Section 120.54(3)(d)1., F.S.
[27] *Id.*
[28] Section 120.54(7)(a), F.S.
[29] *Id.*
[30] *Id.*
[31] Section 120.54(3)(e)6., F.S.
[32] Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or a state university rules relating to internal personnel or business and finance are not published in the Florida Administrative Code (FAC). Forms are not published in the FAC. Section 120.55(1)(a), F.S. Emergency rules are also not published in the FAC.
[33] Division of Administrative Hearings (DOAH) is an agency in the executive branch, administratively housed under the Department of Management Services (DMS) but not subject to its control. The DOAH employs administrative law judges who serve as neutral arbiters presiding over disputes arising under the Administrative Procedures Act (APA). Section 120.65, F.S.
[34] Section 120.56(1), F.S.
[35] Section 120.52(8), F.S.

- The rule imposes regulatory costs on the regulated person, county, or municipality that could have been reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.[36]

Hearing Before an Administrative Law Judge

An administrative law judge (ALJ) at the DOAH hears the rule challenge in a de novo proceeding and, within 30 days after the hearing, makes a determination on the rule's validity based upon a preponderance of the evidence standard. The petitioner and the agency whose rule is challenged are adverse parties.[37] The ALJ's decision constitutes final agency action, which means an agency may not alter the decision after its issuance,[38] but an agency may appeal the decision to the District Court of Appeal where the agency maintains its headquarters.[39]

Effect of Proposed Changes (Section 2)

The bill requires a notice of proposed rule to be filed within 12 months after a notice of rule development. If a notice of proposed rule is not filed within 12 months after the notice of rule development, the agency must withdraw the rule and give notice of the withdrawal in the next issue of the FAR. The bill also reestablishes the mandatory seven-day period between the publication of a notice of rule development and the publication of a notice of proposed rule in the FAR.

The bill further requires that a proposed rule be withdrawn if, *after issuing a notice of proposed rule*, the agency fails to adopt it within the prescribed timeframes in the APA. Once an agency has exceeded the timeframe to adopt the rule, the bill requires the JAPC to notify the agency of the failure. If the agency has not withdrawn the rule within 30 days following the notice, the JAPC must notify the DOS that the date for adoption of the rule has expired. The DOS must then publish a notice of withdrawal of the proposed rule.

The bill requires a notice of rule development and a notice of proposed rule to include the proposed rule number.

The bill also requires an agency to file a copy of a petition to initiate rulemaking with the JAPC.

Finally, the bill defines the term "technical change" to mean a change limited to correcting grammatical, typographical, and similar errors not affecting the substance of the rule.

Joint Administrative Procedures Committee

Present Situation

Background

The JAPC is a standing committee of the Legislature established by joint rule and created to maintain a continuous review of administrative rules, the statutory authority upon which those

[36] Section 120.52(8)(a)-(f), F.S.
[37] Section 120.56(1)(e), F.S.
[38] *Id.*
[39] Section 120.68(2)(a), F.S.

rules are based, and the administrative rulemaking process.[40] Specifically, the JAPC may examine existing rules and must examine each proposed rule to determine whether:

- The rule is an invalid exercise of delegated legislative authority.
- The statutory authority for the rule has been repealed.
- The rule reiterates or paraphrases statutory material.
- The rule is in proper form.
- The notice given prior to adoption was sufficient.
- The rule is consistent with expressed legislative intent.
- The rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law that the rule implements.
- The rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule.
- The rule could be made less complex or more easily comprehensible to the general public.
- The rule's statement of estimated regulatory cost complies with the requirements of the APA and whether the rule does not impose regulatory costs on the regulated person, county, or municipality that could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.
- The rule will require additional appropriations.[41]

Effect of Proposed Changes (Section 5)

The bill removes the permissive authority of the JAPC to examine existing rules and makes such examination mandatory to align with the JAPC's mandate to examine proposed rules.

Agency Review of Rules

Present Situation

The APA requires each agency to annually review its rules.[42] Although an agency may amend or repeal the rule, rules generally do not expire or sunset and many agencies have adopted rules that have not been updated in years.

Effect of Proposed Changes (Section 4)

The bill creates a process called "repromulgation," whereby each agency is required to review its rules for consistency with the powers and duties granted by the agency's enabling statutes. If, after reviewing the rule, the agency determines that substantive changes are not required, the agency must repromulgate the rule to reflect the date of the review. The bill defines the term "repromulgation" to mean the publication and adoption of an existing rule following an agency's review of the rule for consistency with the powers and duties granted by its enabling statute. Each agency must review its rules according to the following schedule:

- If the rule was adopted *before* January 1, 2014, within five years after July 1, 2022; or
- If the rule was adopted on or *after* January 1, 2014, within 10 years after the rule is adopted.

[40] Fla. Leg. J. Rule 4.6; *see also* s. 120.545, F.S.
[41] Section 120.545(1), F.S.
[42] *See* s. 120.74. F.S.

An agency, before repromulgation of a rule and upon approval of its agency head, must:

- Publish a notice of repromulgation in the FAR, which is not required to include the text of the rule; and
- File the rule with the DOS. The rule may not be filed for repromulgation less than 28 days before or more than 90 days after the publication of the notice.

An agency must file a notice of repromulgation with the JAPC at least 14 days before filing the rule with the DOS. The JAPC must certify at the time of filing whether the agency has responded to all of the JAPC's material or written inquiries. The bill specifies that a repromulgated rule is not subject to the hearing requirements of the APA nor is it subject to challenge as a proposed rule.

The bill requires each agency, upon approval of the agency head, to submit three certified copies of the repromulgated rule it proposes to adopt with the DOS and one certified copy of any material incorporated by reference in the rule. The repromulgated rule is adopted upon its filing with the DOS and becomes effective 20 days later. The DOS must then update the history note of the rule in the FAC to reflect the new effective date. The bill requires the DOS to adopt rules to implement the bill's repromulgation provision by December 31, 2022.

If an agency fails to meet the deadline to review the rule or the timeframe to file the rule for repromulgation, the rule is deemed repealed. After such a failure, the JAPC notifies the DOS that the agency has elected to repeal the rule. Thereafter, the DOS must publish a notice of the repeal in the next issue of the FAR and the rule is then stricken from the files of the DOS and the agency.

Statement of Estimated Regulatory Cost

Present Situation

A statement of estimated regulatory cost (SERC) is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the rule as well as to the agency and other governmental entities to implement the rule.[43] Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule.[44] However, a SERC is required if the proposed rule will have an adverse impact on small businesses or increase regulatory costs by more than $200,000 in the aggregate in this state within one year after implementation of the rule.[45] If the agency revises a rule before adoption and the revision increases the regulatory costs of the rule, the agency must revise the SERC to reflect that alteration.[46]

A SERC must include:

- A good faith estimate of the number of people and entities affected by the proposed rule;
- A good faith estimate of the cost to the agency and other governmental entities to implement the proposed rule;

[43] Section 120.541(2), F.S.
[44] Section 120.54(3)(b)1., F.S.
[45] *Id.*
[46] Section 120.541(1)(c), F.S.

- A good faith estimate of transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule's impact on small businesses, small counties, and small municipalities.[47]

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of $1 million within the first five years after implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness, productivity, or innovation; or
- Regulatory costs, including any transactional costs.[48]

If the economic analysis results in an adverse impact or regulatory costs in excess of $1 million within five years after implementation of the rule, then the rule must be ratified by the Legislature in order to take effect.[49]

An agency's failure to prepare an SERC can be raised in a proceeding at the DOAH to invalidate a rule as an invalid exercise of delegated legislative authority, if it is raised within one year after the effective date of the rule and is raised by a person whose substantial interests are affected by the regulatory costs of the rule.[50]

Effect of Proposed Changes (Section 3)

The bill requires each agency to have a website where each of its SERCs may be viewed in their entirety. The DOS must include on the FAR website the agency website addresses where the SERCs can be viewed. An agency must provide in its notice of proposed rule the agency website address where the SERC can be viewed. If an agency revises a SERC, it must provide a notice that a revision has been made and include an agency website address where the revision can be viewed for publication on the FAR website.

The bill clarifies the elements an agency must consider in a SERC when evaluating the economic impacts of the rule. Specifically, the bill requires agency estimates of economic, market, and small business impacts likely to result from compliance with the proposed rule to consider elements such as:

- Increased or decreased consumer prices or value of goods and services;
- Increased costs due to obtaining substitute or alternative products or services;
- The value of time expended by business owners and other business personnel to comply with the proposed rule;
- Capital costs incurred to comply with the proposed rule; and
- Other impacts suggested by the rules ombudsman or interested persons.

[47] Section 120.541(2)(b)-(e), F.S.
[48] Section 120.541(2)(a), F.S.
[49] Section 120.541(3), F.S.
[50] Section 120.541(1)(f), F.S.

In addition, the bill replaces the term "transactional costs" with "compliance costs," requires agencies to consider all direct and indirect costs of compliance, and provides 18 specific types of compliance costs as examples for agencies to consider in their evaluation, including:

- Filing fees;
- Costs of obtaining a license;
- Costs to obtain, install, and maintain equipment necessary for compliance;
- Costs related to accounting, financial, and information management processes, as well as other administrative processes;
- Labor costs;
- Costs of education, training, and testing necessary for compliance; and
- Allocation of administrative and other overhead costs.

The bill allows agencies to survey individuals, businesses, business organizations, counties, and municipalities to collect data helpful to estimate and analyze the costs and impacts of the proposed rule. Each notice of proposed rule must also contain a summary of the SERC describing the regulatory impact of the proposed rule in readable language. Additionally, if an agency holds a hearing on a proposed rule, the bill requires the agency to ensure that the person responsible for preparing the SERC be made available to respond to questions or comments.

Lower Cost Regulatory Alternative

Present Situation

A person substantially affected by a proposed rule may, within 21 days after the publication of a notice of adoption, amendment, or repeal of a rule, submit a lower cost regulatory alternative (LCRA).[51] The LCRA must be a written proposal, made in good faith, which substantially accomplishes the objectives of the law being implemented.[52] A LCRA may recommend that a rule not be adopted at all, if it explains how the "lower costs and objectives of the law will be achieved by not adopting any rule."[53] If a LCRA is submitted to an agency, the agency must prepare an SERC if one has not been previously prepared, or revise its prior SERC, and either adopt the LCRA or provide a statement to explain the reasons for rejecting the LCRA.[54] Additionally, if a LCRA is submitted, the 90-day period for filing a rule is extended an additional 21 days.[55] At least 21 days before filing a rule for adoption, an agency that is required to revise an SERC in response to a LCRA must provide the SERC to the person who submitted the LCRA and to the JAPC and must provide notice on the agency's website that it is available to the public.[56]

Just as in the case of an agency's failure to prepare a SERC, an agency's failure to respond to a LCRA may be raised in a proceeding at the DOAH to invalidate a rule as an invalid delegation of

[51] Section 120.541(1)(a), F.S.
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] Section 120.541(1)(d), F.S.

legislative authority if it is raised within one year after the effective date of the rule and is raised by a person whose substantial interests are affected by the regulatory costs of the rule.[57]

Effect of Proposed Changes (Section 3)

The bill specifies that a LCRA may be submitted after a notice of proposed rule or a notice of change. If submitted after the latter, the LCRA is deemed to have been made in good faith only if the person reasonably believes, and the proposal states the reasons for believing, that the proposed rule as *changed by the notice of change* increases the regulatory costs or creates an adverse impact on small business.

The bill allows an agency receiving a LCRA to have the choice of modifying the proposed rule to reduce regulatory costs in addition to either adopting the LCRA or stating its reasons for rejecting it in favor of the proposed rule. If the rule is modified, the agency must revise its SERC, if one has been prepared. If the agency rejects the LCRA or modifies the proposed rule, the agency must state its reasons for rejecting the LCRA in favor of the proposed or modified rule. When a SERC is revised because a change to a proposed rule increases the projected regulatory costs or the agency modified the rule in response to a LCRA, a summary of the revised SERC must be included in subsequent published rulemaking notices. Under the bill, the revised SERC must be provided to the rules ombudsman, the party that submitted the LCRA, and the JAPC, and must be published in the same manner as the original SERC.

The bill requires an agency to provide a copy of a LCRA to the JAPC at least 21 days before filing the rule for adoption.

Emergency Rules

Present Situation

Agencies are authorized to respond to immediate dangers to the public health, safety, or welfare by adopting emergency rules.[58] Emergency rules are not adopted using the same procedures required of other rules.[59] The notice of the emergency rule and the text of the rule is published in the first available issue of the FAR, however, there is no requirement that an emergency rule be published in the FAC.[60] The agency must publish prior to, or contemporaneous with, the rule's promulgation the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare.[61] The agency's findings of immediate danger are judicially reviewable.[62] Emergency rules are effective immediately, or on a date less than 20 days after filing if specified in rule,[63] but are only effective for a period of no longer than 90 days.[64] An emergency rule is not renewable, except when the agency has initiated rulemaking to adopt rules relating to the subject

[57] Section 120.541(1)(f), F.S.
[58] Section 120.54(4), F.S.
[59] Section 120.54(4)(a), F.S.
[60] Section 120.54(4)(a)3., F.S.
[61] *Id.*
[62] *Id.*
[63] Section 120.54(4)(d), F.S.
[64] Section 120.54(4)(c), F.S.

of the emergency rule and a challenge to the proposed rules has been filed and remains pending or the proposed rules are awaiting ratification by the Legislature.[65]

Effect of Proposed Changes (Sections 2 and 3)

The bill requires emergency rules to be published in the FAC. The bill also allows an agency to make technical changes to the emergency rule within the first seven days after adoption and prohibits an agency from superseding an emergency rule currently in effect. The bill clarifies that an emergency rule is not subject to the legislative ratification process.[66]

Small Business Impact in Rulemaking

Present Situation

Each agency, before the adoption, amendment, or repeal of a rule, must consider the impact of the rule on small businesses.[67] If the agency determines that the proposed action will affect small businesses, the agency must send written notice to the rules ombudsman[68] in the Executive Office of the Governor at least 28 days before the intended action.[69] The agency must adopt the regulatory alternatives offered by the rules ombudsman if it finds the alternatives are feasible and consistent with the stated objectives of the proposed rule and would reduce the impact on small businesses.[70]

If the agency does not adopt the alternatives offered, before rule adoption or amendment, the agency must file a detailed written statement with the JAPC explaining the reasons for failure to adopt such alternatives.[71]

Effect of Proposed Changes (Section 2)

The bill requires an adverse impact on small business to be found if:

- An owner, officer, operator, or manager of a small business must complete any education, training, or testing to comply with the proposed rule in the first year;

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[65] *Id.*

[66] In 2011, the Legislature passed two bills, CS/CS/CS/HB 993 (2011) and CS/CS/CS/HB 849 (2011) that contained conflicting provisions concerning the exemption of emergency rules from the legislative ratification process. In one bill, CS/CS/CS/HB 993 (2011), the provision exempting emergency rules in s. 120.541(4), F.S., from the legislative ratification process was expressly included in the bill. In the other, CS/CS/CS/HB 849 (2011), the provision was erroneously deleted, leading to a statutory conflict. In 2013, the Legislature passed CS/CS/SB 1410 (2013), which amended s. 120.541(4), F.S., to correct a cross reference and in the process the bill erroneously continued the omission of the provision exempting emergency rules. This bill corrects those previous errors by reinstating the provision exempting emergency rules from the legislative ratification process.

[67] Section 120.54(3)(b)2., F.S.

[68] The Governor must appoint a rules ombudsman in the Executive Office of the Governor for purposes of considering the impact of agency rules on the state citizens and businesses. The rules ombudsman must carry out the duties related to rule adoption procedures with respect to small businesses; review agency rules that adversely or disproportionately impact businesses, particularly those relating to small and minority businesses; and make recommendations on any existing or proposed rules to alleviate unnecessary or disproportionate adverse effects to business. Each agency must cooperate fully with the rules ombudsman in identifying such rules and take the necessary steps to waive, modify, or otherwise minimize the adverse effects of any such rules. Section 288.7015, F.S.

[69] Section 120.54(3)(b)2.b.(I), F.S.

[70] Section 120.54(3)(b)2.b.(II), F.S.

[71] Section 120.54(3)(b)2.b.(III), F.S.

- An owner, officer, operator, or manager of a small business is likely to expend 10 hours or purchase professional advice to understand and comply with the rule in the first year;
- Taxes or fees assessed on transactions are likely to increase by $500 or more in the aggregate in one year because of the rule;
- Prices charged for goods and services are restricted or are likely to increase because of the rule;
- Specially trained, licensed, or tested employees will be required;
- Operating costs are expected to increase by at least $1,000 annually; or
- Capital expenditures in excess of $1,000 are necessary to comply with the rule.

If the rules ombudsman of the Executive Office of the Governor provides a regulatory alternative to the agency to lessen the impact of the rule on small businesses, the bill requires the agency to provide the regulatory alternative to the JAPC at least 21 days before filing the rule for adoption.

Incorporation by Reference

Present Situation

The APA allows an agency to incorporate material external to the text of the rule by reference.[72] The material to be incorporated must exist on the date the rule is adopted.[73] If after the rule has been adopted the agency wishes to alter the material incorporated by reference, the rule itself must be amended for the change to be effective.[74] However, an agency rule that incorporates another rule by reference automatically incorporates subsequent amendments to the referenced rule.[75] A rule cannot be amended by reference only.[76] An agency may not incorporate a rule by reference unless:

- The material has been submitted in the prescribed electronic format to the DOS and the full text of the material can be made available for free public access through an electronic hyperlink from the rule making the reference in the FAC; or
- The agency has determined that posting the material publicly on the Internet would constitute a violation of federal copyright law, in which case a statement stating such, along with the address of locations at the DOS and the agency at which the material is available for public inspection and examination, must be included in the notice.[77]

The DOS has adopted a rule governing the requirements for materials incorporated by reference through an adopted rule.[78] The rule requires each agency incorporating material by reference in an administrative rule to certify that the materials incorporated have been filed with the DOS electronically or, if the agency claims the posting of the material would constitute a violation of federal copyright law, the location where the public may view the material.[79]

[72] Section 120.54(1)(i)1., F.S.; *see also* r. 1-1.013, F.A.C.
[73] Section 120.54(1)(i)1., F.S.
[74] *Id.*
[75] Section 120.54(1)(i)2., F.S.
[76] Section 120.54(1)(i)4., F.S.
[77] Section 120.54(1)(i)3., F.S.
[78] Rule 1-1.013, F.A.C.
[79] Rule 1-1.013(5)(d), F.A.C.

Effect of Proposed Changes (Section 2)

Beginning July 1, 2022, the bill requires an agency, in all notices of rulemaking, repromulgated rules, or rule modifications which include material incorporated by reference, to submit the incorporated material in the prescribed electronic format to the DOS with the full text available for free public access through an electronic hyperlink. Alternatively, if an agency determines that posting the incorporated material on the Internet would constitute a violation of federal copyright law, the agency must include in the notice a statement to that effect, along with the addresses of locations at the DOS and the agency at which the material is available for public inspection and examination.

The bill requires the DOS to prescribe by rule that material incorporated by reference included in a notice of proposed rule and a notice of change be formatted in such a way that additions to the text appear underlined and deletions appear as text stricken through.

Annual Regulatory Review

Present Situation

Annually, each agency must prepare a regulatory plan that includes a list of each law enacted during the previous 12 months, which creates or modifies the duties or authority of the agency, and state whether the agency must adopt rules to implement the newly adopted laws.[80] The plan must also include a list of each additional law not otherwise listed that the agency expects to implement by rulemaking before the following July 1, except emergency rules.[81] The plan must include a certification by the agency head or, if the agency head is a collegial body, the presiding officer, and the individual acting as principal legal advisor to the agency verifying the persons have reviewed the plan, verifying the agency regularly reviews all of its rules, and identifying the period during which all rules have most recently been reviewed to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented.[82] By October 1 of each year, the plan must be published on the agency's website or on another state website established for publication of administrative law records with a hyperlink to the plan.[83] The agency must also deliver a copy of the certification to the JAPC and publish a notice in the FAR identifying the date of publication of the agency's regulatory plan.[84]

Effect of Proposed Changes (Section 7)

The bill replaces the requirement that the annual regulatory plan include a listing of each law it expects to implement with rulemaking with the requirement that the plan identify and describe each rule, by rule number or proposed rule number, that the agency expects to develop, adopt, or repeal for the 12-month period beginning October 1 and ending September 30. The annual regulatory plan must identify any rules required to be repromulgated for the 12-month period.

The bill also requires that the annual regulatory plan contain a declaration that the agency head and the general counsel understand that regulatory accountability is necessary to ensure public

[80] Section 120.74(1)(a), F.S.
[81] Section 120.74(1)(b), F.S.
[82] Section 120.74(1)(d), F.S.
[83] Section 120.74(2)(a)1., F.S.
[84] Sections 120.74(2)(a)2. and 120.74(2)(a)3., F.S.

confidence in the integrity of state government and to that end the agency is diligently working toward lowering the total number of rules adopted. The bill requires the declaration to contain the total number of rules adopted and repealed during the previous 12 months.

Florida Administrative Code

Present Situation

The FAC is an electronic compilation of all rules adopted by each agency and maintained by the DOS.[85] The DOS retains the copyright over the FAC.[86]

Each rule in the FAC must cite the grant of rulemaking authority and the specific law implemented.[87] Rules applicable to only one school district, community college district, or county or state university rules relating to internal personnel or business and finance are not required to be included in the FAC.[88] The DOS is required to publish the following information at the beginning of each section of the code concerning an agency:

- The address and telephone number of the executive offices of the agency.
- The manner by which the agency indexes its rules.
- A listing of all rules of that agency excluded from publication in the FAC and a statement as to where those rules may be inspected.[89]

The DOS is required to adopt rules allowing adopted rules and materials incorporated by reference to be filed in electronic form.[90] Further, the DOS is required to prescribe by rule the style and form required for rules, notices, and other materials submitted for filing in the FAC.[91] The rule the DOS has adopted requires rules that are being amended to be coded by underlining new text and by striking through deleted text.[92]

Effect of Proposed Changes (Section 6)

The bill requires the FAC be published once daily, by no later than 8 a.m. If, after publication, a rule is corrected and replaced, the FAC must indicate the rule has been republished and indicate the DOS has corrected it. The bill also requires the history note appended to each rule include the date of any technical changes to the rule and provides such change does not affect the rule's effective date.

Remaining Sections

Sections 8, 9, 10, 11, and 12 are amended to incorporate technical changes to conform cross-references in the bill.

[85] Section 120.55(1)(a)1., F.S.
[86] *Id.*
[87] *Id.*
[88] Section 120.55(1)(a)2., F.S.
[89] Section 120.55(1)(a)3., F.S.
[90] Section 120.55(1)(a)5., F.S.
[91] Section 120.55(1)(c), F.S.
[92] Rule 1-1.010(5)(a), F.A.C. *referencing* r. 1-1.011(3)(c), F.A.C.

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 may have an indeterminate, negative fiscal impact on state government. The bill requires each agency to review and repromulgate its rules, includes additional requirements to comply with notice, publication, and hearing requirements of rules, and includes additional requirements for SERCs. Agencies will likely be required to spend funds to implement the requirements of the bill. Whether these new requirements could be absorbed within each agency's existing resources is not known. For example, regulatory agencies such as the Department of Business and Professional Regulation and the Department of Health may need additional personnel to comply with repromulgation of rules. However, the bill specifies that agencies have to complete rule review within five years for rules adopted before January 1, 2014, and within 10 years for rules adopted after January 1, 2014. Agencies should have sufficient time to request additional funding or personnel through the Legislative Budget Request process should it be determined additional funding or personnel will be required to implement the provisions of the bill.

The Department of State may have additional costs associated with publishing the specified material in the bill.

VI. Technical Deficiencies:

Several sections of the bill could be revised for clarity or consistency.

- Line 120 – The definition of "repromulgation" should be amended for consistency with the provisions in line 891 by adding the phrase "of a notice of repromulgation" so that the definition would read:

> (16) "Repromulgation" means the publication of a notice of repromulgation and adoption of an existing rule following an agency's review of the rule for consistency with the powers an duties granted by its enabling statute.

- Lines 206-209 should be amended to clarify that a notice of a proposed rule is "published" rather than "filed."
- Lines 918 – 957 contain s. 120.545, F.S., "Committee review of agency rules." This provision could be amended to give the JAPC permission to examine a rule that has not been reviewed and amended, repealed, or repromulgated pursuant to the deadlines set forth in s. 120.5435, F.S. As such, the failure to repromulgate would result in an objection by the JAPC rather than an automatic repeal.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.52, 120.54, 120.541, 120.545, 120.55, 120.74, 120.80, 120.81, 420.9072, 420.9075, and 443.091.

This bill creates section 120.5435 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

Barcode 734958 by Appropriations on February 28, 2022:
The amendment:

- Removes the repromulgation process and replaces it with additional requirements for the annual regulatory plan.

- Removes a provision that would have required automatic repeal of a rule if it was not repromulgated and instead authorizes JAPC to file an objection if JAPC identifies a rule as inconsistent with the powers and duties granted by law.
- Provides that the annual regulatory plan must now include an agency review of all of its current rules for consistency with the powers and duties granted by law before July 1, 2027, and requires rules to be reviewed every 10 years thereafter.
- Requires an agency to deliver a written explanation upon request by designated persons for failing to comply with the annual regulatory plan requirements.
- Clarifies that a notice of proposed rule must be published at least seven days after the publication of the notice of rule development.
- Requires an agency to provide a copy of any offered regulatory alternative to JAPC at least 21 days before filing the rule for adoption.

(WITH TITLE AMENDMENT)

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: FAV	.	
02/28/2022	.	
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	.	
	.	

The Committee on Appropriations (Diaz) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present subsections (20), (21), and (22) of section 120.52, Florida Statutes, are redesignated as subsections (21), (22), and (23), respectively, and a new subsection (20) is added to that section, to read:

120.52 Definitions.—As used in this act:

(20) "Technical change" means a change limited to



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correcting grammatical, typographical, or similar errors not affecting the substance of the rule.

Section 2. Subsections (2) and (3) and paragraph (a) of subsection (7) of section 120.54, Florida Statutes, are amended, and paragraphs (e), (f), and (g) are added to subsection (4) of that section, to read:

120.54 Rulemaking.—

(2) RULE DEVELOPMENT; WORKSHOPS; NEGOTIATED RULEMAKING.—

(a)1. Except when the intended action is the repeal of a rule, agencies shall provide notice of the development of proposed rules by publication of a notice of rule development in the Florida Administrative Register before providing notice of a proposed rule as required by paragraph (3)(a). The notice of rule development must ~~shall~~ indicate the subject area to be addressed by rule development, provide a short, plain explanation of the purpose and effect of the proposed rule, cite the grant of rulemaking authority for the proposed rule and the law being implemented ~~specific legal authority for the proposed rule~~, and include the proposed rule number and the preliminary text of the proposed rule ~~rules~~, if available, or a statement of how a person may promptly obtain, without cost, a copy of any preliminary draft, when ~~if~~ available.

2. If a notice of a proposed rule is not filed within 12 months after the notice of rule development, the agency shall withdraw the rule and give notice of the withdrawal in the next available issue of the Florida Administrative Register.

(b) All rules should be drafted in readable language. The language is readable if:

1. It avoids the use of obscure words and unnecessarily



long or complicated constructions; and

2. It avoids the use of unnecessary technical or specialized language that is understood only by members of particular trades or professions.

(c) An agency may hold public workshops for purposes of rule development. If requested in writing by any affected person, an agency must hold public workshops, including workshops in various regions of the state or the agency's service area, for purposes of rule development ~~if requested in writing by any affected person~~, unless the agency head explains in writing why a workshop is unnecessary. The explanation is not final agency action subject to review pursuant to ss. 120.569 and 120.57. The failure to provide the explanation when required may be a material error in procedure pursuant to s. 120.56(1)(c). When a workshop or public hearing is held, the agency must ensure that the persons responsible for preparing the proposed rule are available to explain the agency's proposal and to respond to questions or comments regarding the rule being developed. The workshop may be facilitated or mediated by a neutral third person, or the agency may employ other types of dispute resolution alternatives for the workshop that are appropriate for rule development. Notice of a workshop for rule development must ~~workshop shall~~ be by publication in the Florida Administrative Register not fewer ~~less~~ than 14 days before ~~prior to~~ the date on which the workshop is scheduled to be held and must ~~shall~~ indicate the subject area that ~~which~~ will be addressed; the agency contact person; and the place, date, and time of the workshop.

(d)1. An agency may use negotiated rulemaking in developing


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and adopting rules. The agency should consider the use of negotiated rulemaking when complex rules are being drafted or strong opposition to the rules is anticipated. The agency should consider, but is not limited to considering, whether a balanced committee of interested persons who will negotiate in good faith can be assembled, whether the agency is willing to support the work of the negotiating committee, and whether the agency can use the group consensus as the basis for its proposed rule. Negotiated rulemaking uses a committee of designated representatives to draft a mutually acceptable proposed rule.

2. An agency that chooses to use the negotiated rulemaking process described in this paragraph shall publish in the Florida Administrative Register a notice of negotiated rulemaking that includes a listing of the representative groups that will be invited to participate in the negotiated rulemaking process. Any person who believes that his or her interest is not adequately represented may apply to participate within 30 days after publication of the notice. All meetings of the negotiating committee shall be noticed and open to the public pursuant to ~~the provisions of~~ this chapter. The negotiating committee shall be chaired by a neutral facilitator or mediator.

3. The agency's decision to use negotiated rulemaking, its selection of the representative groups, and approval or denial of an application to participate in the negotiated rulemaking process are not agency action. ~~Nothing in~~ This subparagraph is not intended to affect the rights of a substantially ~~an~~ affected person to challenge a proposed rule developed under this paragraph in accordance with s. 120.56(2).

(3) ADOPTION PROCEDURES.—



(a) *Notices.*—

1. Before ~~Prior to~~ the adoption, amendment, or repeal of any rule other than an emergency rule, an agency, upon approval of the agency head, shall give notice of its intended action, setting forth a short, plain explanation of the purpose and effect of the proposed action; the proposed rule number and the full text of the proposed rule or amendment and a summary thereof; a reference to the grant of rulemaking authority pursuant to which the rule is adopted; and a reference to the section or subsection of the Florida Statutes or the Laws of Florida being implemented or interpreted. The notice must include a summary of the agency's statement of the estimated regulatory costs, if one has been prepared, based on the factors set forth in s. 120.541(2), which describes the regulatory impact of the proposed rule in readable language; an agency website address where the statement of estimated regulatory costs can be viewed in its entirety, if one has been prepared; a statement that any person who wishes to provide the agency with information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided by s. 120.541(1), must do so in writing within 21 days after publication of the notice; and a statement as to whether, based on the statement of the estimated regulatory costs or other information expressly relied upon and described by the agency if no statement of regulatory costs is required, the proposed rule is expected to require legislative ratification pursuant to s. 120.541(3). The notice must state the procedure for requesting a public hearing on the proposed rule. Except when the intended action is the repeal of a rule,



the notice must include a reference both to the date on which and to the place where the notice of rule development that is required by subsection (2) appeared.

2. The notice shall be published in the Florida Administrative Register at least 7 days after the publication of the notice of rule development and at least ~~not less than~~ 28 days before ~~prior to~~ the intended action. The proposed rule, including all materials proposed to be incorporated by reference and the statement of estimated regulatory costs, if one has been prepared, must ~~shall~~ be available for inspection and copying by the public at the time of the publication of notice. After December 31, 2022, material proposed to be incorporated by reference in the notice required by this paragraph must be made available in the manner prescribed by sub-subparagraph (1)(i)3.a. or sub-subparagraph (1)(i)3.b.

3. The notice shall be mailed to all persons named in the proposed rule and mailed or delivered electronically to all persons who, at least 14 days before publication of the notice ~~prior to such mailing~~, have made requests of the agency for advance notice of its proceedings. The agency shall also give such notice as is prescribed by rule to those particular classes of persons to whom the intended action is directed.

4. The adopting agency shall file with the committee, at least 21 days before ~~prior to~~ the proposed adoption date, a copy of each rule it proposes to adopt; a copy of any material incorporated by reference in the rule; a detailed written statement of the facts and circumstances justifying the proposed rule; a copy of any statement of estimated regulatory costs that has been prepared pursuant to s. 120.541; a statement of the


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extent to which the proposed rule relates to federal standards or rules on the same subject; and the notice required by subparagraph 1.

5. If any of the information, other than substantive changes to the rule text, which is required to be included in the notice required by subparagraph 1. is omitted or is incorrect, the agency must publish a notice of correction. A notice of correction does not affect the timeframes for filing the rule for adoption as set forth in paragraph (e). Technical changes are not required to be published as a notice of correction.

(b) *Special matters to be considered in rule adoption.*—

1. Statement of estimated regulatory costs.—Before the adoption, amendment, or repeal of any rule other than an emergency rule, an agency is encouraged to prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541. However, an agency must prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541, if:

a. The proposed rule will have an adverse impact on small business; or

b. The proposed rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in this state within 1 year after the implementation of the rule.

2. Small businesses, small counties, and small cities.—

a. For purposes of this subsection and s. 120.541(2), an adverse impact on small businesses, as defined in s. 288.703 or sub-subparagraph b., exists if, for any small business:

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(I) An owner, officer, operator, or manager must complete any education, training, or testing to comply with the rule in the first year or is likely to spend at least 10 hours or purchase professional advice to understand and comply with the rule in the first year;

(II) Taxes or fees assessed on transactions are likely to increase by $500 or more in the aggregate in 1 year because of the rule;

(III) Prices charged for goods and services are restricted or are likely to increase because of the rule;

(IV) Specially trained, licensed, or tested employees will be required because of the rule;

(V) Operating costs are expected to increase by at least $1,000 annually because of the rule; or

(VI) Capital expenditures in excess of $1,000 are necessary to comply with the rule.

b. Each agency, before the adoption, amendment, or repeal of a rule, shall consider the impact of the rule on small businesses as defined in ~~by~~ s. 288.703 and the impact of the rule on small counties or small cities as defined in ~~by~~ s. 120.52. Whenever practicable, an agency shall tier its rules to reduce disproportionate impacts on small businesses, small counties, or small cities to avoid regulating small businesses, small counties, or small cities that do not contribute significantly to the problem the rule is designed to address. An agency may define "small business" to include businesses employing more than 200 persons, may define "small county" to include those with populations of more than 75,000, and may define "small city" to include those with populations of more



than 10,000, if it finds that such a definition is necessary to adapt a rule to the needs and problems of small businesses, small counties, or small cities. The agency shall consider each of the following methods for reducing the impact of the proposed rule on small businesses, small counties, and small cities, or any combination of these entities:

(I) Establishing less stringent compliance or reporting requirements in the rule.

(II) Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements.

(III) Consolidating or simplifying the rule's compliance or reporting requirements.

(IV) Establishing performance standards or best management practices to replace design or operational standards in the rule.

(V) Exempting small businesses, small counties, or small cities from any or all requirements of the rule.

c.(I) ~~b.(I)~~ If the agency determines that the proposed action will affect small businesses as defined by the agency as provided in sub-subparagraph b. ~~a.~~, the agency shall send written notice of the rule to the rules ombudsman in the Executive Office of the Governor at least 28 days before the intended action.

(II) Each agency shall adopt those regulatory alternatives offered by the rules ombudsman in the Executive Office of the Governor and provided to the agency no later than 21 days after the rules ombudsman's receipt of the written notice of the rule which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the


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impact on small businesses. When regulatory alternatives are offered by the rules ombudsman in the Executive Office of the Governor, the 90-day period for filing the rule in subparagraph (e)2. is extended for a period of 21 days. At least 21 days before filing the rule for adoption, the agency shall provide a copy of any regulatory alternative offered to the agency to the committee.

(III) If an agency does not adopt all alternatives offered pursuant to this sub-subparagraph, it shall, before rule adoption or amendment and pursuant to subparagraph (d)1., file a detailed written statement with the committee explaining the reasons for failure to adopt such alternatives. Within 3 working days after the filing of such notice, the agency shall send a copy of such notice to the rules ombudsman in the Executive Office of the Governor.

(c) *Hearings.*—

1. If the intended action concerns any rule other than one relating exclusively to procedure or practice, the agency shall, on the request of any affected person received within 21 days after the date of publication of the notice of intended agency action, give affected persons an opportunity to present evidence and argument on all issues under consideration. The agency may schedule a public hearing on the proposed rule and, if requested by any affected person, shall schedule a public hearing on the proposed rule. When a public hearing is held, the agency must ensure that staff are available to explain the agency's proposal and to respond to questions or comments regarding the proposed rule. If the agency head is a board or other collegial body created under s. 20.165(4) or s. 20.43(3)(g), and one or more



requested public hearings is scheduled, the board or other collegial body shall conduct at least one of the public hearings itself and may not delegate this responsibility without the consent of those persons requesting the public hearing. Any material pertinent to the issues under consideration submitted to the agency within 21 days after the date of publication of the notice or submitted to the agency between the date of publication of the notice and the end of the final public hearing shall be considered by the agency and made a part of the record of the rulemaking proceeding.

2. Rulemaking proceedings shall be governed solely by the provisions of this section unless a person timely asserts that the person’s substantial interests will be affected in the proceeding and affirmatively demonstrates to the agency that the proceeding does not provide adequate opportunity to protect those interests. If the agency determines that the rulemaking proceeding is not adequate to protect the person’s interests, it shall suspend the rulemaking proceeding and convene a separate proceeding under the provisions of ss. 120.569 and 120.57. The agency shall publish notice of convening a separate proceeding in the Florida Administrative Register. Similarly situated persons may be requested to join and participate in the separate proceeding. Upon conclusion of the separate proceeding, the rulemaking proceeding shall be resumed. All timelines in this section are tolled during any suspension of the rulemaking proceeding under this subparagraph, beginning on the date the notice of convening a separate proceeding is published and resuming on the day after the conclusion of the separate proceeding.


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(d) *Modification or withdrawal of proposed rules.*—

1. After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, if the proposed rule has not been changed from the proposed rule as previously filed with the committee, or contains only technical changes, the adopting agency shall file a notice to that effect with the committee at least 7 days before ~~prior to~~ filing the proposed rule for adoption. Any change, other than a technical change ~~that does not affect the substance of the rule~~, must be supported by the record of public hearings held on the proposed rule, must be in response to written material submitted to the agency within 21 days after the date of publication of the notice of intended agency action or submitted to the agency between the date of publication of the notice and the end of the final public hearing, or must be in response to a proposed objection by the committee. Any change, other than a technical change, to a statement of estimated regulatory costs requires a notice of change. In addition, ~~when~~ any change, other than a technical change, to the text of ~~is made in~~ a proposed rule or any material incorporated by reference requires~~, other than a technical change,~~ the adopting agency to ~~shall~~ provide a copy of a notice of change by certified mail or actual delivery to any person who requests it in writing no later than 21 days after the notice required in paragraph (a). The agency shall file the notice of change with the committee, along with the reasons for the change, and provide the notice of change to persons requesting it, at least 21 days before ~~prior to~~ filing the proposed rule for adoption. The notice of change shall be published in the Florida Administrative Register at least 21


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days before ~~prior to~~ filing the proposed rule for adoption. The notice of change must include a summary of any revision to a statement of estimated regulatory costs required by s. 120.541(1)(c). This subparagraph does not apply to emergency rules adopted pursuant to subsection (4). After December 31, 2022, material proposed to be incorporated by reference in the notice required by this paragraph must be made available in the manner prescribed by sub-subparagraph (1)(i)3.a. or sub-subparagraph (1)(i)3.b.

2. After the notice required by paragraph (a) and before ~~prior to~~ adoption, the agency may withdraw the proposed rule in whole or in part.

3. After the notice required by paragraph (a), the agency shall withdraw the proposed rule if the agency has failed to adopt it within the prescribed timeframes in this chapter. The committee shall notify the agency that it has exceeded the timeframe to adopt the proposed rule. If, 30 days after notice by the committee, the agency has not given notice of the withdrawal of the rule, the committee shall notify the Department of State that the date for adoption of the rule has expired, and the Department of State shall publish a notice of withdrawal of the proposed rule.

4.~~3.~~ After adoption and before the rule becomes effective, a rule may be modified or withdrawn only in the following circumstances:

a. When the committee objects to the rule;

b. When a final order, which is not subject to further appeal, is entered in a rule challenge brought pursuant to s. 120.56 after the date of adoption but before the rule becomes



effective pursuant to subparagraph (e)6.;

c. If the rule requires ratification, when more than 90 days have passed since the rule was filed for adoption without the Legislature ratifying the rule, in which case the rule may be withdrawn but may not be modified; or

d. When the committee notifies the agency that an objection to the rule is being considered, in which case the rule may be modified to extend the effective date by not more than 60 days.

5.~~4.~~ The agency shall give notice of its decision to withdraw or modify a rule in the first available issue of the publication in which the original notice of rulemaking was published, shall notify those persons described in subparagraph (a)3. in accordance with the requirements of that subparagraph, and shall notify the Department of State if the rule is required to be filed with the Department of State.

6.~~5.~~ After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.

(e) *Filing for final adoption; effective date.*—

1. If the adopting agency is required to publish its rules in the Florida Administrative Code, the agency, upon approval of the agency head, shall file with the Department of State three certified copies of the rule it proposes to adopt; one copy of any material incorporated by reference in the rule, certified by the agency; a summary of the rule; a summary of any hearings held on the rule; and a detailed written statement of the facts and circumstances justifying the rule. Agencies not required to publish their rules in the Florida Administrative Code shall file one certified copy of the proposed rule, and the other



material required by this subparagraph, in the office of the agency head, and such rules shall be open to the public.

2. A rule may not be filed for adoption less than 28 days or more than 90 days after the notice required by paragraph (a), until 21 days after the notice of change required by paragraph (d), until 14 days after the final public hearing, until 21 days after a statement of estimated regulatory costs required under s. 120.541 has been provided to all persons who submitted a lower cost regulatory alternative and made available to the public at a readily accessible page on the agency's website, or until the administrative law judge has rendered a decision under s. 120.56(2), whichever applies. When a required notice of change is published before ~~prior to~~ the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after the date of publication. If notice of a public hearing is published before ~~prior to~~ the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after adjournment of the final hearing on the rule, 21 days after receipt of all material authorized to be submitted at the hearing, or 21 days after receipt of the transcript, if one is made, whichever is latest. The term "public hearing" includes any public meeting held by any agency at which the rule is considered. If a petition for an administrative determination under s. 120.56(2) is filed, the period during which a rule must be filed for adoption is extended to 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete.



3. At the time a rule is filed, the agency shall certify that the time limitations prescribed by this paragraph have been complied with, that all statutory rulemaking requirements have been met, and that there is no administrative determination pending on the rule.

4. At the time a rule is filed, the committee shall certify whether the agency has responded in writing to all material and timely written comments or written inquiries made on behalf of the committee. The Department of State shall reject any rule that is not filed within the prescribed time limits; that does not comply with all statutory rulemaking requirements and rules of the Department of State; upon which an agency has not responded in writing to all material and timely written inquiries or written comments; upon which an administrative determination is pending; or which does not include a statement of estimated regulatory costs, if required.

5. If a rule has not been adopted within the time limits imposed by this paragraph or has not been adopted in compliance with all statutory rulemaking requirements, the agency proposing the rule shall withdraw the proposed rule and give notice of its action in the next available issue of the Florida Administrative Register.

6. The proposed rule shall be adopted on being filed with the Department of State and become effective 20 days after being filed, on a later date specified in the notice required by subparagraph (a)1., on a date required by statute, or upon ratification by the Legislature pursuant to s. 120.541(3). Rules not required to be filed with the Department of State shall become effective when adopted by the agency head, on a later


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date specified by rule or statute, or upon ratification by the Legislature pursuant to s. 120.541(3). If the committee notifies an agency that an objection to a rule is being considered, the agency may postpone the adoption of the rule to accommodate review of the rule by the committee. When an agency postpones adoption of a rule to accommodate review by the committee, the 90-day period for filing the rule is tolled until the committee notifies the agency that it has completed its review of the rule.

For the purposes of this paragraph, the term "administrative determination" does not include subsequent judicial review.

(4) EMERGENCY RULES.—

(e) Emergency rules shall be published in the Florida Administrative Code.

(f) An agency may not supersede an emergency rule currently in effect.

(g) An agency may make technical changes to an emergency rule within the first 7 days after the rule is adopted and must publish a notice of the technical change in the Florida Administrative Register.

(7) PETITION TO INITIATE RULEMAKING.—

(a) Any person regulated by an agency or having substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule or to provide the minimum public information required by this chapter. The petition shall specify the proposed rule and action requested. The agency shall file a copy of the petition with the committee. Not later than 30 calendar days following the date of filing a petition, the



agency shall initiate rulemaking proceedings under this chapter, otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial.

Section 3. Section 120.541, Florida Statutes, is amended to read:

120.541 Statement of estimated regulatory costs.—

(1)(a) Within 21 days after publication of the notice of a proposed rule or notice of change ~~required under s. 120.54(3)(a)~~, a substantially affected person may submit to an agency a good faith written proposal for a lower cost regulatory alternative to a proposed rule which substantially accomplishes the objectives of the law being implemented. The agency shall provide a copy of any proposal for a lower cost regulatory alternative to the committee at least 21 days before filing the rule for adoption. The proposal may include the alternative of not adopting any rule if the proposal explains how the lower costs and objectives of the law will be achieved by not adopting any rule. If submitted after a notice of change, a proposal for a lower cost regulatory alternative is deemed to be made in good faith only if the person reasonably believes, and the proposal states the person’s reasons for believing, that the proposed rule as changed by the notice of change increases the regulatory costs or creates an adverse impact on small businesses that was not created by the previous proposed rule. If such a proposal is submitted, the 90-day period for filing the rule is extended 21 days. Upon the submission of the lower cost regulatory alternative, the agency shall prepare a statement of estimated regulatory costs as provided in subsection (2), or shall revise its prior statement of estimated regulatory costs, and ~~either~~


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adopt the alternative proposal, reject the alternative proposal, or modify the proposed rule to reduce the regulatory costs. If the agency rejects the alternative proposal or modifies the proposed rule, the agency shall ~~or~~ provide a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(b) If a proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate within 1 year after the implementation of the rule, the agency shall prepare a statement of estimated regulatory costs as required by s. 120.54(3)(b).

(c) The agency shall revise a statement of estimated regulatory costs if any change to the rule made under s. 120.54(3)(d) increases the regulatory costs of the rule or if the rule is modified in response to the submission of a lower cost regulatory alternative. A summary of the revised statement must be included with any subsequent notice published under s. 120.54(3).

(d) At least 21 days before filing the proposed rule for adoption, an agency that is required to revise a statement of estimated regulatory costs shall provide the statement to the person who submitted the lower cost regulatory alternative, to the rules ombudsman in the Executive Office of the Governor, and to the committee. The revised statement shall be published and made available in the same manner as the original statement of estimated regulatory costs ~~and shall provide notice on the agency's website that it is available to the public~~.

(e) Notwithstanding s. 120.56(1)(c), the failure of the


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agency to prepare and publish a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative as provided in this subsection is a material failure to follow the applicable rulemaking procedures or requirements set forth in this chapter.

(f) An agency's failure to prepare and publish a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative may not be raised in a proceeding challenging the validity of a rule pursuant to s. 120.52(8)(a) unless:

1. Raised in a petition filed no later than 1 year after the effective date of the rule; and

2. Raised by a person whose substantial interests are affected by the rule's regulatory costs.

(g) A rule that is challenged pursuant to s. 120.52(8)(f) may not be declared invalid unless:

1. The issue is raised in an administrative proceeding within 1 year after the effective date of the rule;

2. The challenge is to the agency's rejection of a lower cost regulatory alternative offered under paragraph (a) or s. 120.54(3)(b)2.c. ~~s. 120.54(3)(b)2.b.~~; and

3. The substantial interests of the person challenging the rule are materially affected by the rejection.

(2) A statement of estimated regulatory costs must ~~shall~~ include:

(a) An economic analysis showing whether the rule directly or indirectly:

1. Is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector



investment in excess of $1 million in the aggregate within 5 years after the implementation of the rule;

2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within 5 years after the implementation of the rule; or

3. Is likely to increase regulatory costs, including all ~~any transactional~~ costs and impacts estimated in the statement of estimated regulatory costs, in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

(b) A good faith estimate of the number of individuals, small businesses, and other entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

(c) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

(d) A good faith estimate of the compliance ~~transactional~~ costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. ~~As used in this section, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional~~



~~operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.~~

(e) An analysis of the impact on small businesses as defined in ~~by~~ s. 288.703~~,~~ and an analysis of the impact on small counties and small cities as defined in s. 120.52. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.

(f) Any additional information that the agency determines may be useful.

(g) In the statement or revised statement, whichever applies, a description of any regulatory alternatives submitted under paragraph (1)(a) and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(3) If the adverse impact or regulatory costs of the rule exceed any of the criteria established in paragraph (2)(a), the rule shall be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days before ~~prior to~~ the next regular legislative session, and the rule may not take effect until it is ratified by the Legislature.

(4) Subsection (3) does not apply to the adoption of:

(a) Federal standards pursuant to s. 120.54(6).

(b) Triennial updates of and amendments to the Florida Building Code which are expressly authorized by s. 553.73.

(c) Triennial updates of and amendments to the Florida Fire Prevention Code which are expressly authorized by s. 633.202.

(d) Emergency rules adopted pursuant to s. 120.54(4).


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(5) For purposes of subsections (2) and (3), adverse impacts and regulatory costs likely to occur within 5 years after implementation of the rule include adverse impacts and regulatory costs estimated to occur within 5 years after the effective date of the rule. However, if any provision of the rule is not fully implemented upon the effective date of the rule, the adverse impacts and regulatory costs associated with such provision must be adjusted to include any additional adverse impacts and regulatory costs estimated to occur within 5 years after implementation of such provision.

(6)(a) In evaluating the impacts described in paragraphs (2)(a) and (e), an agency shall include good faith estimates of market impacts likely to result from compliance with the proposed rule, including:

1. Increased customer charges for goods or services.

2. Decreased market value of goods or services produced, provided, or sold.

3. Increased costs resulting from the purchase of substitute or alternative goods or services.

4. The reasonable value of time to be spent by owners, officers, operators, and managers to understand and comply with the proposed rule, including, but not limited to, time to be spent to complete required education, training, or testing.

5. Capital costs.

6. Any other impacts suggested by the rules ombudsman in the Executive Office of the Governor or interested persons.

(b) In estimating and analyzing the information required in paragraphs (2)(b)-(e), the agency may use surveys of individuals, businesses, business organizations, counties, and



municipalities to collect data helpful to estimate and analyze the costs and impacts.

(c) In estimating compliance costs under paragraph (2)(d), the agency shall consider, among other matters, all direct and indirect costs necessary to comply with the proposed rule that are readily ascertainable based upon standard business practices, including, but not limited to, costs related to:

1. Filing fees.

2. Expenses to obtain a license.

3. Necessary equipment.

4. Installation, utilities, and maintenance of necessary equipment.

5. Necessary operations and procedures.

6. Accounting, financial, information management, and other administrative processes.

7. Other processes.

8. Labor based on relevant rates of wages, salaries, and benefits.

9. Materials and supplies.

10. Capital expenditures, including financing costs.

11. Professional and technical services, including contracted services necessary to implement and maintain compliance.

12. Monitoring and reporting.

13. Qualifying and recurring education, training, and testing.

14. Travel.

15. Insurance and surety requirements.

16. A fair and reasonable allocation of administrative



costs and other overhead.

17. Reduced sales or other revenues.

18. Other items suggested by the rules ombudsman in the Executive Office of the Governor or any interested person, business organization, or business representative.

(7)(a) The Department of State shall include on the Florida Administrative Register website the agency website addresses where statements of estimated regulatory costs may be viewed in their entirety.

(b) An agency that prepares a statement of estimated regulatory costs must provide, as part of the notice required under s. 120.54(3)(a), the agency website address where the statement of estimated regulatory costs can be read in its entirety to the Department of State for publication in the Florida Administrative Register.

(c) If an agency revises its statement of estimated regulatory costs, the agency must provide notice that a revision has been made as provided in s. 120.54(3)(d). Such notice must include the agency website address where the revision can be viewed in its entirety.

Section 4. Subsections (1) and (2) of section 120.545, Florida Statutes, are amended to read:

120.545 Committee review of agency rules.—

(1) As a legislative check on legislatively created authority, the committee shall examine each existing rule and proposed rule, except for those proposed rules exempted by s. 120.81(1)(e) and (2), and its accompanying material, and each emergency rule, ~~and may examine any existing rule,~~ for the purpose of determining whether:



(a) The rule is an invalid exercise of delegated legislative authority.

(b) The statutory authority for the rule has been repealed.

(c) The rule reiterates or paraphrases statutory material.

(d) The rule is in proper form.

(e) The notice given before ~~prior to~~ its adoption was sufficient to give adequate notice of the purpose and effect of the rule.

(f) The rule is consistent with expressed legislative intent pertaining to the specific provisions of law which the rule implements.

(g) The rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law which the rule implements.

(h) The rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule.

(i) The rule could be made less complex or more easily comprehensible to the general public.

(j) The rule’s statement of estimated regulatory costs complies with the requirements of s. 120.541 and whether the rule does not impose regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

(k) The rule will require additional appropriations.

(l) If the rule is an emergency rule, there exists an emergency justifying the adoption of such rule, the agency is within its statutory authority, and the rule was adopted in



compliance with the requirements and limitations of s. 120.54(4).

(2) The committee may request from an agency such information as is reasonably necessary for examination of a rule as required by subsection (1). The committee shall consult with legislative standing committees having jurisdiction over the subject areas. If the committee objects to a rule, the committee shall, within 5 days after the objection, certify that fact to the agency whose rule has been examined and include with the certification a statement detailing its objections with particularity. The committee may file an objection for the failure of an agency to repeal or amend an existing rule which the committee identifies as being inconsistent with the powers and duties granted by its enabling statute or having no enabling statute. The committee shall notify the Speaker of the House of Representatives and the President of the Senate of any objection to an agency rule concurrent with certification of that fact to the agency. Such notice shall include a copy of the rule and the statement detailing the committee's objections to the rule.

Section 5. Paragraphs (a), (b), and (c) of subsection (1) of section 120.55, Florida Statutes, are amended to read:

120.55 Publication.—

(1) The Department of State shall:

(a)1. Through a continuous revision and publication system, compile and publish electronically, on a website managed by the department, the "Florida Administrative Code." The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was



adopted, all history notes as authorized in s. 120.545(7), complete indexes to all rules and any material incorporated by reference contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code shall display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department may contract with a publishing firm for a printed publication; however, the department shall retain responsibility for the code as provided in this section. The electronic publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.

2. Not publish in the Florida Administrative Code rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance ~~shall not be published in the Florida Administrative Code~~. Exclusion from publication in the Florida Administrative Code does ~~shall~~ not affect the validity or effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, ~~the department shall~~ publish the address and telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, a listing of all forms and material incorporated by reference adopted by rule which are used by the agency, and a statement as to where those rules may be inspected.


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4. Not publish forms ~~shall not be published~~ in the Florida Administrative Code. However,~~; but~~ any form that ~~which~~ an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of the term "rule" as defined ~~provided~~ in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.

5. Require all materials incorporated by reference in any part of an adopted rule after December 31, 2022, ~~The department shall allow adopted rules and material incorporated by reference~~ to be filed in the manner prescribed by s. 120.54(1)(i)3.a. or b. ~~electronic form as prescribed by department rule.~~ When a rule is filed for adoption with incorporated material in electronic form, the department's publication of the Florida Administrative Code on its website must contain a hyperlink from the incorporating reference in the rule directly to that material. The department may not allow hyperlinks from rules in the Florida Administrative Code to any material other than that filed with and maintained by the department, but may allow hyperlinks to incorporated material maintained by the department from the adopting agency's website or other sites.


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6. Include the date of any technical changes to a rule in the history note of the rule in the Florida Administrative Code. A technical change does not affect the effective date of the rule. A technical change made after the adoption of a rule must be published as a notice of correction.

(b)1. Electronically publish on a website managed by the department a continuous revision and publication entitled the "Florida Administrative Register," which shall serve as the official publication. The Florida Administrative Register shall be published once daily by 8 a.m. If after publication, a rule is corrected and replaced, the Florida Administrative Register shall indicate:

a. That the Florida Administrative Register has been republished.

b. The rule that has been corrected by the Department of State.

2. The Florida Administrative Register ~~and~~ must contain:

a.~~1.~~ All notices required by s. 120.54(2) and (3)(a), showing the text of all rules proposed for consideration.

b.~~2.~~ All notices of public meetings, hearings, and workshops conducted in accordance with s. 120.525, including a statement of the manner in which a copy of the agenda may be obtained.

c.~~3.~~ A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules.

d.~~4.~~ Notice of petitions for declaratory statements or administrative determinations.

e.~~5.~~ A summary of each objection to any rule filed by the


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Administrative Procedures Committee.

f.~~6.~~ A list of rules filed for adoption in the previous 7 days.

g.~~7.~~ A list of all rules filed for adoption pending legislative ratification under s. 120.541(3). A rule shall be removed from the list once notice of ratification or withdrawal of the rule is received.

h.~~8.~~ Any other material required or authorized by law or deemed useful by the department.

The department may contract with a publishing firm for a printed publication of the Florida Administrative Register and make copies available on an annual subscription basis.

(c) Prescribe by rule the style and form required for rules, notices, and other materials submitted for filing, including a rule requiring documents created by an agency that are proposed to be incorporated by reference in notices published pursuant to s. 120.54(3)(a) and (d) to be coded in the same manner as notices published pursuant to s. 120.54(3)(a)1.

Section 6. Section 120.74, Florida Statutes, is amended to read:

120.74 Agency annual rulemaking and regulatory plans; reports.—

(1) REGULATORY PLAN.—By October 1 of each year, each agency shall prepare a regulatory plan.

(a) The plan must include a listing of each law enacted or amended during the previous 12 months which creates or modifies the duties or authority of the agency. If the Governor or the Attorney General provides a letter to the committee stating that



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a law affects all or most agencies, the agency may exclude the law from its plan. For each law listed by an agency under this paragraph, the plan must state:

1. Whether the agency must adopt rules to implement the law.

2. If rulemaking is necessary to implement the law:

a. Whether a notice of rule development has been published and, if so, the citation to such notice in the Florida Administrative Register.

b. The date by which the agency expects to publish the notice of proposed rule under s. 120.54(3)(a).

3. If rulemaking is not necessary to implement the law, a concise written explanation of the reasons why the law may be implemented without rulemaking.

(b) The plan must also identify and describe each rule, including each rule number or proposed rule number, that ~~include a listing of each law not otherwise listed pursuant to paragraph (a) which~~ the agency expects to develop, adopt, or repeal for the 12-month period beginning on October 1 and ending on September 30 ~~implement by rulemaking before the following July 1~~, excluding emergency rules ~~except emergency rulemaking~~. For each rule identified and described ~~law listed~~ under this paragraph, the plan must state whether the rulemaking is intended to simplify, clarify, increase efficiency, improve coordination with other agencies, reduce regulatory costs, or delete obsolete, unnecessary, or redundant rules.

(c) The plan must include any desired update to the prior year's regulatory plan or supplement published pursuant to subsection (7). If, in a prior year, a law was identified under



this paragraph or under subparagraph (a)1. as a law requiring rulemaking to implement but a notice of proposed rule has not been published:

1. The agency shall identify and again list such law, noting the applicable notice of rule development by citation to the Florida Administrative Register; or

2. If the agency has subsequently determined that rulemaking is not necessary to implement the law, the agency shall identify such law, reference the citation to the applicable notice of rule development in the Florida Administrative Register, and provide a concise written explanation of the reason why the law may be implemented without rulemaking.

(d)1. The plan must include a schedule for the agency to review its rules for consistency with the powers and duties granted by the enabling statutes in accordance with this paragraph. Each agency must review all of its rules existing before July 1, 2022, in accordance with this paragraph by July 1, 2027. All rules adopted on or after July 1, 2022, and all existing rules reviewed initially by July 1, 2027, shall be reviewed every 10 years after their respective dates of adoption or review. This schedule shall be updated on an annual basis to ensure that all rules are reviewed every 10 years after their respective dates of adoption or review.

2. The plan must include an index and summary of rules reviewed during the previous year listed by number and title. The index must indicate:

a. The rules reviewed pursuant to this paragraph that are consistent with the powers and duties granted by the enabling

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statutes.

b. The rules reviewed pursuant to this paragraph that require amendments to remove portions of the rule that are inconsistent with the powers and duties granted by the enabling statute. A summary of the required amendments and a schedule for such rulemaking shall be provided.

c. The rules reviewed pursuant to this paragraph that will be repealed in their entirety because there is no enabling statute. A schedule for the repeal of such rules shall be provided.

d. A list of all statutes and laws, or parts thereof, that grant duplicative, redundant, or unused rulemaking authority, as set out in s. 11.242(5)(j), and a recommendation as to what statutes, laws, or parts thereof, should be repealed. The agency must also provide the list to the Division of Law Revision.

(e) The plan must include a certification executed on behalf of the agency by both the agency head, or, if the agency head is a collegial body, the presiding officer; and the individual acting as principal legal advisor to the agency head. The certification must declare:

1. ~~Verify~~ That the persons executing the certification have reviewed the plan.

2. ~~Verify~~ That the agency regularly reviews all of its rules and identify the period during which all rules have most recently been reviewed to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented.

3. That the agency understands that regulatory accountability is necessary to ensure public confidence in the


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integrity of state government and, to that end, the agency is diligently working toward reducing the number of regulatory requirements consistent with the agency's rulemaking authority and the laws implemented.

4. The total number of rules adopted and repealed during the previous 12 months.

5. That all actions set forth in the prior annual regulatory plan have been completed or are on a schedule to be completed.

6. That all materials incorporated by reference in the rules reviewed are available in the manner prescribed by s. 120.54(1)(i)3.a. or b.

(2) PUBLICATION AND DELIVERY TO THE COMMITTEE.—

(a) By October 1 of each year, each agency shall:

1. Publish its regulatory plan on its website or on another state website established for publication of administrative law records. A clearly labeled hyperlink to the current plan must be included on the agency's primary website homepage.

2. Electronically deliver to the committee a copy of the certification required in paragraph (1)(e) ~~(1)(d)~~.

3. Publish in the Florida Administrative Register a notice identifying the date of publication of the agency's regulatory plan. The notice must include a hyperlink or website address providing direct access to the published plan.

(b) To satisfy the requirements of paragraph (a), a board established under s. 20.165(4), and any other board or commission receiving administrative support from the Department of Business and Professional Regulation, may coordinate with the Department of Business and Professional Regulation, and a board



established under s. 20.43(3)(g) may coordinate with the Department of Health, for inclusion of the board's or commission's plan and notice of publication in the coordinating department's plan and notice and for the delivery of the required documentation to the committee.

(c) A regulatory plan prepared under subsection (1) and any regulatory plan published under this chapter before July 1, 2014, shall be maintained at an active website for 10 years after the date of initial publication on the agency's website or another state website.

(3) DEPARTMENT REVIEW OF BOARD PLAN.—By October 15 of each year:

(a) For each board established under s. 20.165(4) and any other board or commission receiving administrative support from the Department of Business and Professional Regulation, the Department of Business and Professional Regulation shall file with the committee a certification that the department has reviewed each board's and commission's regulatory plan. A certification may relate to more than one board or commission.

(b) For each board established under s. 20.43(3)(g), the Department of Health shall file with the committee a certification that the department has reviewed the board's regulatory plan. A certification may relate to more than one board.

(4) DEADLINE FOR RULE DEVELOPMENT.—By November 1 of each year, each agency shall publish a notice of rule development under s. 120.54(2) for each law identified in the agency's regulatory plan pursuant to subparagraph (1)(a)1. for which rulemaking is necessary to implement but for which the agency



did not report the publication of a notice of rule development under subparagraph (1)(a)2.

(5) DEADLINE TO PUBLISH PROPOSED RULE.—For each law for which implementing rulemaking is necessary as identified in the agency's plan pursuant to subparagraph (1)(a)1. or subparagraph (1)(c)1., the agency shall publish a notice of proposed rule pursuant to s. 120.54(3)(a) by April 1 of the year following the deadline for the regulatory plan. This deadline may be extended if the agency publishes a notice of extension in the Florida Administrative Register identifying each rulemaking proceeding for which an extension is being noticed by citation to the applicable notice of rule development as published in the Florida Administrative Register. The agency shall include a concise statement in the notice of extension identifying any issues that are causing the delay in rulemaking. An extension shall expire on October 1 after the April 1 deadline, provided that the regulatory plan due on October 1 may further extend the rulemaking proceeding by identification pursuant to subparagraph (1)(c)1. or conclude the rulemaking proceeding by identification pursuant to subparagraph (1)(c)2. A published regulatory plan may be corrected at any time to accomplish the purpose of extending or concluding an affected rulemaking proceeding and is deemed corrected as of the October 1 due date. Upon publication of a correction, the agency shall publish in the Florida Administrative Register a notice of the date of the correction identifying the affected rulemaking proceeding by applicable citation to the Florida Administrative Register.

(6) CERTIFICATIONS.—Each agency shall file a certification with the committee upon compliance with subsection (4) and upon



filing a notice under subsection (5) of either a deadline extension or a regulatory plan correction. A certification may relate to more than one notice or contemporaneous act. The date or dates of compliance shall be noted in each certification.

(7) SUPPLEMENTING THE REGULATORY PLAN.—After publication of the regulatory plan, the agency shall supplement the plan within 30 days after a bill becomes a law if the law is enacted before the next regular session of the Legislature and the law substantively modifies the agency's specifically delegated legal duties, unless the law affects all or most state agencies as identified by letter to the committee from the Governor or the Attorney General. The supplement must include the information required in paragraph (1)(a) and shall be published as required in subsection (2), but no certification or delivery to the committee is required. The agency shall publish in the Florida Administrative Register notice of publication of the supplement, and include a hyperlink on its website or web address for direct access to the published supplement. For each law reported in the supplement, if rulemaking is necessary to implement the law, the agency shall publish a notice of rule development by the later of the date provided in subsection (4) or 60 days after the bill becomes a law, and a notice of proposed rule shall be published by the later of the date provided in subsection (5) or 120 days after the bill becomes a law. The proposed rule deadline may be extended to the following October 1 by notice as provided in subsection (5). If such proposed rule has not been filed by October 1, a law included in a supplement shall also be included in the next annual plan pursuant to subsection (1).

(8) FAILURE TO COMPLY.—If an agency fails to comply with a


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requirement of subsection (1), paragraph (2)(a), or subsection (5), within 15 days after written demand from the committee or from the chair of any other legislative committee, the agency shall deliver a written explanation of the reasons for noncompliance to the committee, the President of the Senate, the Speaker of the House of Representatives, and the chair of any legislative committee requesting the explanation of the reasons for noncompliance.

(9) EDUCATIONAL UNITS.—This section does not apply to educational units.

Section 7. 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 administrative procedures; amending s. 120.52, F.S.; defining the term "technical change"; amending s. 120.54, F.S.; requiring a notice of rule development to include certain information; requiring a notice of withdrawal if a notice of proposed rule is not filed within a certain timeframe; requiring a notice of proposed rule to include certain information; requiring certain notices to be published within a specified timeframe; requiring that material proposed to be incorporated by reference be made available in a specified manner; authorizing electronic delivery of notices to persons who have



requested advance notice of agency rulemaking proceedings; requiring publication of a notice of correction in certain circumstances; providing that a notice of correction does not affect certain timeframes; revising the circumstances under which a proposed rule's adverse impact on small businesses is considered to exist; requiring an agency to provide notice of a regulatory alternative to the Administrative Procedures Committee before filing the rule for adoption; requiring an agency to publish a notice of convening a separate proceeding in certain circumstances; providing that rulemaking timelines are tolled during such separate proceedings; requiring a notice of change for certain changes to a statement of estimated regulatory costs; revising the requirements for the contents of a notice of change; requiring the committee to notify the Department of State that the date for an agency to adopt a rule has expired under certain circumstances; requiring the department to publish a notice of withdrawal under certain circumstances; requiring that certain information be available on the agency's website; requiring emergency rules to be published in the Florida Administrative Code; prohibiting agencies from making changes to emergency rules by superseding the rule; authorizing an agency to make technical changes to an emergency rule during a specified timeframe; requiring publication of a notice of the technical change in the Florida Administrative Register; requiring an agency


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to file a copy of a certain petition with the committee; amending s. 120.541, F.S.; requiring an agency to provide a copy of any proposal for a lower cost regulatory alternative to the committee within a certain timeframe; specifying the circumstances under which such a proposal is made in good faith; revising requirements for an agency's consideration of a lower cost regulatory alternative; providing for an agency's revision and publication of a revised statement of estimated regulatory costs in response to certain circumstances; requiring that a revised statement of lower cost regulatory alternative be submitted to the rules ombudsman in the Executive Office of the Governor and published in a specified manner; revising the information required in a statement of estimated regulatory cost; deleting the definition of the term "transactional costs"; revising the applicability of specified provisions; providing additional requirements for the calculation of estimated regulatory costs; requiring the department to include specified information on a website; requiring certain agencies to include certain information in a statement of estimated regulatory costs and on their websites; providing certain requirements for an agency that revises a statement of estimated regulatory costs; amending s. 120.545, F.S.; requiring the committee to examine existing rules; authorizing the committee to file an objection in certain instances; amending s. 120.55, F.S.; requiring the Florida Administrative


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Code to contain complete indexes to any material incorporated by reference contained in the code; requiring material incorporated by reference to be filed in a specified manner after a certain date; requiring the department to include the date of a technical change in the Florida Administrative Code; providing that a technical change does not affect the effective date of a rule; requiring a technical change made after rule adoption to be published as a notice of correction; requiring the Florida Administrative Register to be published once daily and indicate certain information; requiring specified rulemaking; amending s. 120.74, F.S.; requiring an agency's regulatory plan to identify and describe each rule the agency plans to develop, adopt, or repeal during a specified 12 month period; requiring such plan to include a schedule of rule review; providing indexes of certain information to be included in such plan; requiring such plan to include a list of certain statutes and laws or parts thereof; requiring the agency to provide such list to the Division of Law Revision; requiring a certification in such plan to make certain declarations; requiring an agency to deliver a written explanation upon request by designated persons for failing to comply with the regulatory plan requirements; providing an effective date.

By Senator Diaz

36-00345-22 2022536__

A bill to be entitled

An act relating to administrative procedures; amending s. 120.52, F.S.; defining terms; amending s. 120.54, F.S.; applying certain provisions applicable to all rules other than emergency rules to repromulgated rules; requiring a notice of rule development to include certain information; requiring a notice of withdrawal if a notice of proposed rule is not filed within a certain timeframe; requiring that certain persons be available at a workshop or public hearing to receive public input; requiring a notice of proposed rule to include certain information; requiring certain notices to be published within a specified timeframe; requiring that material proposed to be incorporated by reference be made available in a specified manner; authorizing electronic delivery of notices to persons who have requested advance notice of agency rulemaking proceedings; revising the circumstances under which a proposed rule's adverse impact on small businesses is considered to exist; requiring an agency to provide notice of a regulatory alternative to the Administrative Procedures Committee within a certain timeframe; requiring an agency to publish a notice of convening a separate proceeding in certain circumstances; providing that rulemaking timelines are tolled during such separate proceedings; requiring a notice of change for certain changes to a statement of estimated regulatory costs; revising the requirements for the contents of a notice of change;

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requiring the committee to notify the Department of State that the date for an agency to adopt a rule has expired under certain circumstances; requiring the department to publish a notice of withdrawal under certain circumstances; requiring that certain information be available on the agency's website; requiring emergency rules to be published in the Florida Administrative Code; prohibiting agencies from making changes to emergency rules by superseding the rule; authorizing an agency to make technical changes to an emergency rule during a specified timeframe; requiring an agency to file a copy of a certain petition with the committee; amending s. 120.541, F.S.; requiring an agency to provide a copy of any proposal for a lower cost regulatory alternative to the committee within a certain timeframe; specifying the circumstances under which such a proposal is made in good faith; revising requirements for an agency's consideration of a lower cost regulatory alternative; providing for an agency's revision and publication of a revised statement of estimated regulatory costs in response to certain circumstances; requiring that a revised statement of lower cost regulatory alternative be submitted to the rules ombudsman and published in a specified manner; revising the information required in a statement of estimated regulatory costs; deleting the definition of the term "transactional costs"; revising the applicability of specified provisions; providing additional requirements for the calculation

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

of estimated regulatory costs; requiring the department to include specified information on a website; requiring certain agencies to include certain information in a statement of estimated regulatory costs and on their websites; providing certain requirements for an agency that revises a statement of estimated regulatory costs; conforming a cross-reference; creating s. 120.5435, F.S.; providing legislative intent; requiring agency review of rules and repromulgation of rules that do not require substantive changes within a specified timeframe; providing that failure of an agency to meet certain deadlines applicable to a rule required to be repromulgated constitutes the repeal of the rule; requiring an agency to publish a notice of repromulgation in the Florida Administrative Register and file a rule for promulgation with the department within a specified timeframe; requiring an agency to file a notice of repromulgation with the committee within a specified timeframe; providing requirements for the notice of repromulgation; providing that a repromulgated rule is not subject to challenge as a proposed rule and that certain hearing requirements do not apply; requiring an agency to file a specified number of certified copies of a proposed repromulgated rule and any material incorporated by reference; providing that a repromulgated rule is adopted upon filing with the department and becomes effective after a specified time; requiring the department to update

certain information in the Florida Administrative Code; requiring the department to adopt rules by a certain date; amending s. 120.545, F.S.; requiring, rather than authorizing, the committee to examine existing rules; amending s. 120.55, F.S.; requiring the Florida Administrative Code to be published once daily and indicate certain information; requiring materials incorporated by reference to be filed in a specified manner; requiring the department to include the date of a technical change in the Florida Administrative Code; providing that a technical change does not affect the effective date of a rule; requiring specified rulemaking; amending s. 120.74, F.S.; requiring an agency to identify and describe each rule it plans to develop, adopt, or repeal during the forthcoming year in the agency's annual regulatory plan; requiring that an agency's annual regulatory plan identify any rules required to be repromulgated during the forthcoming year; requiring the agency to make certain declarations concerning the annual regulatory plan; amending ss. 120.80, 120.81, 420.9072, 420.9075, and 443.091, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (16) through (19) and (20) through (22) of section 120.52, Florida Statutes, are redesignated as subsections (17) through (20) and subsections

(22) through (24), respectively, and new subsections (16) and (21) are added to that section, to read:

120.52 Definitions.—As used in this act:

(16) "Repromulgation" means the publication and adoption of an existing rule following an agency's review of the rule for consistency with the powers and duties granted by its enabling statute.

(21) "Technical change" means a change limited to correcting grammatical, typographical, or similar errors not affecting the substance of the rule.

Section 2. Paragraph (i) of subsection (1), subsections (2) and (3), and paragraph (a) of subsection (7) of section 120.54, Florida Statutes, are amended, and paragraphs (e) and (f) are added to subsection (4) of that section, to read:

120.54 Rulemaking.—

(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN EMERGENCY RULES.—

(i)1. A rule may incorporate material by reference but only as the material exists on the date the rule is adopted. For purposes of the rule, changes in the material are not effective unless the rule is amended to incorporate the changes.

2. An agency rule that incorporates by specific reference another rule of that agency automatically incorporates subsequent amendments to the referenced rule unless a contrary intent is clearly indicated in the referencing rule. A notice of amendments to a rule that has been incorporated by specific reference in other rules of that agency must explain the effect of those amendments on the referencing rules.

3. In rules adopted after December 31, 2010, and rules

repromulgated on or after July 1, 2022, material may not be incorporated by reference unless:

a. The material has been submitted in the prescribed electronic format to the Department of State and the full text of the material can be made available for free public access through an electronic hyperlink from the rule making the reference in the Florida Administrative Code; or

b. The agency has determined that posting the material on the Internet for purposes of public examination and inspection would constitute a violation of federal copyright law, in which case a statement to that effect, along with the address of locations at the Department of State and the agency at which the material is available for public inspection and examination, must be included in the notice required by subparagraph (3)(a)1.

4. A rule may not be amended by reference only. Amendments must set out the amended rule in full in the same manner as required by the State Constitution for laws.

5. Notwithstanding any contrary provision in this section, when an adopted rule of the Department of Environmental Protection or a water management district is incorporated by reference in the other agency's rule to implement a provision of part IV of chapter 373, subsequent amendments to the rule are not effective as to the incorporating rule unless the agency incorporating by reference notifies the committee and the Department of State of its intent to adopt the subsequent amendment, publishes notice of such intent in the Florida Administrative Register, and files with the Department of State a copy of the amended rule incorporated by reference. Changes in the rule incorporated by reference are effective as to the other

agency 20 days after the date of the published notice and filing with the Department of State. The Department of State shall amend the history note of the incorporating rule to show the effective date of such change. Any substantially affected person may, within 14 days after the date of publication of the notice of intent in the Florida Administrative Register, file an objection to rulemaking with the agency. The objection shall specify the portions of the rule incorporated by reference to which the person objects and the reasons for the objection. The agency does ~~shall~~ not have the authority under this subparagraph to adopt those portions of the rule specified in such objection. The agency shall publish notice of the objection and of its action in response in the next available issue of the Florida Administrative Register.

6. The Department of State may adopt by rule requirements for incorporating materials pursuant to this paragraph.

(2) RULE DEVELOPMENT; WORKSHOPS; NEGOTIATED RULEMAKING.—

(a)1. Except when the intended action is the repeal of a rule, agencies shall provide notice of the development of proposed rules by publication of a notice of rule development in the Florida Administrative Register before providing notice of a proposed rule as required by paragraph (3)(a). The notice of rule development must ~~shall~~ indicate the subject area to be addressed by rule development, provide a short, plain explanation of the purpose and effect of the proposed rule, cite the grant of rulemaking authority for the proposed rule and the law being implemented ~~specific legal authority for the proposed rule~~, and include the proposed rule number and the preliminary text of the proposed rules, if available, or a statement of how

a person may promptly obtain, without cost, a copy of any preliminary draft, when ~~if~~ available.

2. If a notice of a proposed rule is not filed within 12 months after the notice of rule development, the agency must withdraw the rule and give notice of the withdrawal in the next available issue of the Florida Administrative Register.

(b) All rules must ~~should~~ be drafted in readable language. The language is readable if:

1. It avoids the use of obscure words and unnecessarily long or complicated constructions; and

2. It avoids the use of unnecessary technical or specialized language that is understood only by members of particular trades or professions.

(c) An agency may hold public workshops for purposes of rule development. If requested in writing by any affected person, an agency must hold public workshops, including workshops in various regions of the state or the agency's service area, for purposes of rule development ~~if requested in writing by any affected person~~, unless the agency head explains in writing why a workshop is unnecessary. The explanation is not final agency action subject to review pursuant to ss. 120.569 and 120.57. The failure to provide the explanation when required may be a material error in procedure pursuant to s. 120.56(1)(c). When a workshop or public hearing is held, the agency must ensure that the persons responsible for preparing the proposed rule are available to receive public input, to explain the agency's proposal, and to respond to questions or comments regarding the rule being developed. The workshop may be facilitated or mediated by a neutral third person, or the agency

may employ other types of dispute resolution alternatives for the workshop which ~~that~~ are appropriate for rule development. Notice of a workshop for rule development must ~~workshop shall~~ be by publication in the Florida Administrative Register not less than 14 days before ~~prior to~~ the date on which the workshop is scheduled to be held and must ~~shall~~ indicate the subject area that ~~which~~ will be addressed; the agency contact person; and the place, date, and time of the workshop.

(d)1. An agency may use negotiated rulemaking in developing and adopting rules. The agency should consider the use of negotiated rulemaking when complex rules are being drafted or strong opposition to the rules is anticipated. The agency should consider, but is not limited to considering, whether a balanced committee of interested persons who will negotiate in good faith can be assembled, whether the agency is willing to support the work of the negotiating committee, and whether the agency can use the group consensus as the basis for its proposed rule. Negotiated rulemaking uses a committee of designated representatives to draft a mutually acceptable proposed rule.

2. An agency that chooses to use the negotiated rulemaking process described in this paragraph shall publish in the Florida Administrative Register a notice of negotiated rulemaking which ~~that~~ includes a listing of the representative groups that will be invited to participate in the negotiated rulemaking process. Any person who believes that his or her interest is not adequately represented may apply to participate within 30 days after publication of the notice. All meetings of the negotiating committee shall be noticed and open to the public pursuant to ~~the provisions of~~ this chapter. The negotiating committee shall

be chaired by a neutral facilitator or mediator.

3. The agency's decision to use negotiated rulemaking, its selection of the representative groups, and approval or denial of an application to participate in the negotiated rulemaking process are not agency action. ~~Nothing in~~ This subparagraph is not intended to affect the rights of a substantially ~~an~~ affected person to challenge a proposed rule developed under this paragraph in accordance with s. 120.56(2).

(3) ADOPTION PROCEDURES.—

(a) *Notices.*—

1. Before ~~Prior to~~ the adoption, amendment, or repeal of any rule other than an emergency rule, an agency, upon approval of the agency head, shall give notice of its intended action, setting forth a short, plain explanation of the purpose and effect of the proposed action; the rule number and full text of the proposed rule or amendment and a summary thereof; a reference to the grant of rulemaking authority pursuant to which the rule is adopted; and a reference to the section or subsection of the Florida Statutes or the Laws of Florida being implemented or interpreted. The notice must include a concise summary of the agency's statement of the estimated regulatory costs, if one has been prepared, based on the factors set forth in s. 120.541(2). The notice must describe the regulatory impact of the rule in readable language; an agency website address where the statement of estimated regulatory costs can be viewed in its entirety, if one has been prepared; a statement that any person who wishes to provide the agency with information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as

provided by s. 120.541(1), must do so in writing within 21 days after publication of the notice; and a statement as to whether, based on the statement of the estimated regulatory costs or other information expressly relied upon and described by the agency if no statement of regulatory costs is required, the proposed rule is expected to require legislative ratification pursuant to s. 120.541(3). The notice must state the procedure for requesting a public hearing on the proposed rule. Except when the intended action is the repeal of a rule, the notice must include a reference both to the date on which and to the place where the notice of rule development that is required by subsection (2) appeared.

2. The notice shall be published in the Florida Administrative Register at least 7 days after the publication of the notice of rule development and at least ~~not less than~~ 28 days before ~~prior to~~ the intended action. The proposed rule, including all materials proposed to be incorporated by reference and the statement of estimated regulatory costs, if one has been prepared, must ~~shall~~ be available for inspection and copying by the public at the time of the publication of notice. Material proposed to be incorporated by reference in the notice must be made available in the manner prescribed by sub-subparagraph (1)(i)3.a. or sub-subparagraph (1)(i)3.b.

3. The notice shall be mailed to all persons named in the proposed rule and mailed or delivered electronically to all persons who, at least 14 days before publication of the notice ~~prior to such mailing~~, have made requests of the agency for advance notice of its proceedings. The agency shall also give such notice as is prescribed by rule to those particular classes

of persons to whom the intended action is directed.

4. The adopting agency shall file with the committee, at least 21 days before ~~prior to~~ the proposed adoption date, a copy of each rule it proposes to adopt; a copy of any material incorporated by reference in the rule; a detailed written statement of the facts and circumstances justifying the proposed rule; a copy of any statement of estimated regulatory costs that has been prepared pursuant to s. 120.541; a statement of the extent to which the proposed rule relates to federal standards or rules on the same subject; and the notice required by subparagraph 1.

(b) *Special matters to be considered in rule adoption.*—

1. Statement of estimated regulatory costs.—Before the adoption , amendment, or repeal of any rule other than an emergency rule, an agency is encouraged to prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541. However, an agency must prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541, if:

a. The proposed rule will have an adverse impact on small business; or

b. The proposed rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in this state within 1 year after the implementation of the rule.

2. Small businesses, small counties, and small cities.—

a. For purposes of this subsection and s. 120.541(2), an adverse impact on small businesses, as defined in s. 288.703 or sub-subparagraph b., exists if, for any small business:

(I) An owner, an officer, an operator, or a manager must complete any education, training, or testing to comply with the rule in the first year or is likely to spend at least 10 hours or to purchase professional advice to understand and comply with the rule in the first year;

(II) Taxes or fees assessed on transactions are likely to increase by $500 or more in the aggregate in 1 year;

(III) Prices charged for goods and services are restricted or are likely to increase because of the rule;

(IV) Specially trained, licensed, or tested employees will be required because of the rule;

(V) Operating costs are expected to increase by at least $1,000 annually because of the rule; or

(VI) Capital expenditures in excess of $1,000 are necessary to comply with the rule.

b. Each agency, before the adoption, amendment, or repeal of a rule, shall consider the impact of the rule on small businesses as defined in ~~by~~ s. 288.703 and the impact of the rule on small counties or small cities as defined in ~~by~~ s. 120.52. Whenever practicable, an agency shall tier its rules to reduce disproportionate impacts on small businesses, small counties, or small cities to avoid regulating small businesses, small counties, or small cities that do not contribute significantly to the problem the rule is designed to address. An agency may define "small business" to include businesses employing more than 200 persons, may define "small county" to include those with populations of more than 75,000, and may define "small city" to include those with populations of more than 10,000, if the agency ~~it~~ finds that such a definition is

necessary to adapt a rule to the needs and problems of small businesses, small counties, or small cities. The agency shall consider each of the following methods for reducing the impact of the proposed rule on small businesses, small counties, and small cities, or any combination of these entities:

(I) Establishing less stringent compliance or reporting requirements in the rule.

(II) Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements.

(III) Consolidating or simplifying the rule's compliance or reporting requirements.

(IV) Establishing performance standards or best management practices to replace design or operational standards in the rule.

(V) Exempting small businesses, small counties, or small cities from any or all requirements of the rule.

c.(I)~~b.(I)~~ If the agency determines that the proposed action will affect small businesses as defined by the agency as provided in sub-subparagraph b. ~~a.~~, the agency must ~~shall~~ send written notice of the rule to the rules ombudsman in the Executive Office of the Governor at least 28 days before the intended action.

(II) Each agency shall adopt those regulatory alternatives offered by the rules ombudsman in the Executive Office of the Governor and provided to the agency no later than 21 days after the rules ombudsman's receipt of the written notice of the rule which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small businesses. When regulatory alternatives are

offered by the rules ombudsman in the Executive Office of the Governor, the 90-day period for filing the rule in subparagraph (e)2. is extended for a period of 21 days. The agency shall provide notice to the committee of any regulatory alternative offered to the agency pursuant to this sub-subparagraph at least 21 days before filing the rule for adoption.

(III) If an agency does not adopt all alternatives offered pursuant to this sub-subparagraph, it shall, before rule adoption or amendment and pursuant to subparagraph (d)1., file a detailed written statement with the committee explaining the reasons for failure to adopt such alternatives. Within 3 working days after the filing of such notice, the agency shall send a copy of such notice to the rules ombudsman in the Executive Office of the Governor.

(c) *Hearings.*—

1. If the intended action concerns any rule other than one relating exclusively to procedure or practice, the agency shall, on the request of any affected person received within 21 days after the date of publication of the notice of intended agency action, give affected persons an opportunity to present evidence and argument on all issues under consideration. The agency may schedule a public hearing on the proposed rule and, if requested by any affected person, shall schedule a public hearing on the proposed rule. When a public hearing is held, the agency must ensure that the persons responsible for preparing the proposed rule and the statement of estimated regulatory costs, if one has been prepared, ~~staff~~ are available to explain the agency's proposal and to respond to questions or comments regarding the proposed rule, the statement of estimated regulatory costs, if

one has been prepared, and the agency's decision whether to adopt a lower cost regulatory alternative submitted pursuant to s. 120.541(1)(a). If the agency head is a board or other collegial body created under s. 20.165(4) or s. 20.43(3)(g), and one or more requested public hearings is scheduled, the board or other collegial body shall conduct at least one of the public hearings itself and may not delegate this responsibility without the consent of those persons requesting the public hearing. Any material pertinent to the issues under consideration submitted to the agency within 21 days after the date of publication of the notice or submitted to the agency between the date of publication of the notice and the end of the final public hearing shall be considered by the agency and made a part of the record of the rulemaking proceeding.

2. Rulemaking proceedings shall be governed solely by the provisions of this section unless a person timely asserts that the person's substantial interests will be affected in the proceeding and affirmatively demonstrates to the agency that the proceeding does not provide adequate opportunity to protect those interests. If the agency determines that the rulemaking proceeding is not adequate to protect the person's interests, it shall suspend the rulemaking proceeding and convene a separate proceeding under ~~the provisions of~~ ss. 120.569 and 120.57. The agency shall publish notice of convening a separate proceeding in the Florida Administrative Register. Similarly situated persons may be requested to join and participate in the separate proceeding. Upon conclusion of the separate proceeding, the rulemaking proceeding shall be resumed. All timelines in this section are tolled during any suspension of the rulemaking

proceeding under this subparagraph, beginning on the date the notice of convening a separate proceeding is published and resuming on the day after the conclusion of the separate proceeding.

(d) *Modification or withdrawal of proposed rules.*—

1. After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, if the proposed rule text has not been changed from that of the proposed rule as previously filed with the committee, or contains only technical changes, the adopting agency shall file a notice to that effect with the committee at least 7 days before ~~prior to~~ filing the proposed rule for adoption. Any change, other than a technical change ~~that does not affect the substance of the rule~~, must be supported by the record of public hearings held on the proposed rule, must be in response to written material submitted to the agency within 21 days after the date of publication of the notice of intended agency action or submitted to the agency between the date of publication of the notice and the end of the final public hearing, or must be in response to a proposed objection by the committee. Any change, other than a technical change, to a statement of estimated regulatory costs requires a notice of change. In addition, ~~when~~ any change, other than a technical change, to the text of ~~is made in~~ a proposed rule or any material incorporated by reference requires~~, other than a technical change,~~ the adopting agency to ~~shall~~ provide a copy of a notice of change by certified mail or actual delivery to any person who requests it in writing no later than 21 days after the notice required in paragraph (a). The agency shall file the notice of change with

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

the committee, along with the reasons for the change, and provide the notice of change to persons requesting it, at least 21 days before ~~prior to~~ filing the proposed rule for adoption. The notice of change shall be published in the Florida Administrative Register at least 21 days before ~~prior to~~ filing the proposed rule for adoption. The notice of change must include a summary of any revision to a statement of estimated regulatory costs required by s. 120.541(1)(c). This subparagraph does not apply to emergency rules adopted pursuant to subsection (4). Material proposed to be incorporated by reference in the notice required by this subparagraph must be made available in the manner prescribed by sub-subparagraph (1)(i)3.a. or sub-subparagraph (1)(i)3.b.

2. After the notice required by paragraph (a) and before ~~prior to~~ adoption, the agency may withdraw the proposed rule in whole or in part.

3. After the notice required by paragraph (a), the agency must withdraw the proposed rule if the agency has failed to adopt it within the prescribed timeframes in this chapter. The committee shall notify the agency that it has exceeded the timeframe to adopt the proposed rule. If, 30 days after notice by the committee, the agency has not given notice of the withdrawal of the rule, the committee must notify the Department of State that the date for adoption of the rule has expired, and the Department of State shall publish a notice of withdrawal of the proposed rule.

4.~~3.~~ After adoption and before the rule becomes effective, a rule may be modified or withdrawn only in the following circumstances:

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

a. When the committee objects to the rule;

b. When a final order, which is not subject to further appeal, is entered in a rule challenge brought pursuant to s. 120.56 after the date of adoption but before the rule becomes effective pursuant to subparagraph (e)6.;

c. If the rule requires ratification, when more than 90 days have passed since the rule was filed for adoption without the Legislature ratifying the rule, in which case the rule may be withdrawn but may not be modified; or

d. When the committee notifies the agency that an objection to the rule is being considered, in which case the rule may be modified to extend the effective date by not more than 60 days.

5.~~4.~~ The agency shall give notice of its decision to withdraw or modify a rule in the first available issue of the publication in which the original notice of rulemaking was published, shall notify those persons described in subparagraph (a)3. in accordance with the requirements of that subparagraph, and shall notify the Department of State if the rule is required to be filed with the Department of State.

6.~~5.~~ After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.

(e) *Filing for final adoption; effective date.*—

1. If the adopting agency is required to publish its rules in the Florida Administrative Code, the agency, upon approval of the agency head, must ~~shall~~ file with the Department of State three certified copies of the rule it proposes to adopt; one copy of any material incorporated by reference in the rule, certified by the agency; a summary of the rule; a summary of any

hearings held on the rule; and a detailed written statement of the facts and circumstances justifying the rule. Agencies not required to publish their rules in the Florida Administrative Code shall file one certified copy of the proposed rule, and the other material required by this subparagraph, in the office of the agency head, and such rules shall be open to the public.

2. A rule may not be filed for adoption less than 28 days or more than 90 days after the notice required by paragraph (a), until 21 days after the notice of change required by paragraph (d), until 14 days after the final public hearing, until 21 days after a statement of estimated regulatory costs required under s. 120.541 has been provided to all persons who submitted a lower cost regulatory alternative and made available to the public at a readily accessible page on the agency's website, or until the administrative law judge has rendered a decision under s. 120.56(2), whichever applies. When a required notice of change is published before ~~prior to~~ the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after the date of publication. If notice of a public hearing is published before ~~prior to~~ the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after adjournment of the final hearing on the rule, 21 days after receipt of all material authorized to be submitted at the hearing, or 21 days after receipt of the transcript, if one is made, whichever is latest. The term "public hearing" includes any public meeting held by any agency at which the rule is considered. If a petition for an administrative determination under s. 120.56(2) is filed, the

period during which a rule must be filed for adoption is extended to 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete.

3. At the time a rule is filed, the agency shall certify that the time limitations prescribed by this paragraph have been complied with, that all statutory rulemaking requirements have been met, and that there is no administrative determination pending on the rule.

4. At the time a rule is filed, the committee shall certify whether the agency has responded in writing to all material and timely written comments or written inquiries made on behalf of the committee. The Department of State shall reject any rule that is not filed within the prescribed time limits; that does not comply with all statutory rulemaking requirements and rules of the Department of State; upon which an agency has not responded in writing to all material and timely written inquiries or written comments; upon which an administrative determination is pending; or which does not include a statement of estimated regulatory costs, if required.

5. If a rule has not been adopted within the time limits imposed by this paragraph or has not been adopted in compliance with all statutory rulemaking requirements, the agency proposing the rule must ~~shall~~ withdraw the proposed rule and give notice of its action in the next available issue of the Florida Administrative Register.

6. The proposed rule shall be adopted upon ~~on~~ being filed with the Department of State and become effective 20 days after being filed, on a later date specified in the notice required by

subparagraph (a)1., on a date required by statute, or upon ratification by the Legislature pursuant to s. 120.541(3). Rules not required to be filed with the Department of State shall become effective when adopted by the agency head, on a later date specified by rule or statute, or upon ratification by the Legislature pursuant to s. 120.541(3). If the committee notifies an agency that an objection to a rule is being considered, the agency may postpone the adoption of the rule to accommodate review of the rule by the committee. When an agency postpones adoption of a rule to accommodate review by the committee, the 90-day period for filing the rule is tolled until the committee notifies the agency that it has completed its review of the rule.

For the purposes of this paragraph, the term "administrative determination" does not include subsequent judicial review.

(4) EMERGENCY RULES.—

(e) Emergency rules shall be published in the Florida Administrative Code.

(f) An agency may not supersede an emergency rule currently in effect. Technical changes to an emergency rule may be made within the first 7 days after adoption of the rule.

(7) PETITION TO INITIATE RULEMAKING.—

(a) Any person regulated by an agency or having substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule or to provide the minimum public information required by this chapter. The petition shall specify the proposed rule and action requested. The agency shall file a copy of the petition with the committee. Not later than 30

calendar days following the date of filing a petition, the agency shall initiate rulemaking proceedings under this chapter, otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial.

Section 3. Section 120.541, Florida Statutes, is amended to read:

120.541 Statement of estimated regulatory costs.—

(1)(a) Within 21 days after publication of the notice of a proposed rule or notice of change ~~required under s. 120.54(3)(a)~~, a substantially affected person may submit to an agency a good faith written proposal for a lower cost regulatory alternative to a proposed rule which substantially accomplishes the objectives of the law being implemented. The agency shall provide a copy of any proposal for a lower cost regulatory alternative to the committee at least 21 days before filing the rule for adoption. The proposal may include the alternative of not adopting any rule if the proposal explains how the lower costs and objectives of the law will be achieved by not adopting any rule. If submitted after a notice of change, a proposal for a lower cost regulatory alternative is deemed to be made in good faith only if the person reasonably believes, and the proposal states the person's reasons for believing, that the proposed rule as changed by the notice of change increases the regulatory costs or creates an adverse impact on small businesses which was not created by the previous proposed rule. If such a proposal is submitted, the 90-day period for filing the rule is extended 21 days. Upon the submission of the lower cost regulatory alternative, the agency shall prepare a statement of estimated regulatory costs as provided in subsection (2), or shall revise

its prior statement of estimated regulatory costs, and either adopt the alternative proposal, reject the alternative proposal, or modify the proposed rule to reduce the regulatory costs. If the agency rejects the alternative proposal or modifies the proposed rule, the agency must ~~or~~ provide a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(b) If a proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate within 1 year after the implementation of the rule, the agency shall prepare a statement of estimated regulatory costs as required by s. 120.54(3)(b).

(c) The agency shall revise a statement of estimated regulatory costs if any change to the rule made under s. 120.54(3)(d) increases the regulatory costs of the rule or if the rule is modified in response to the submission of a lower cost regulatory alternative. A summary of the revised statement must be included with any subsequent notice published under s. 120.54(3).

(d) At least 21 days before filing the proposed rule for adoption, an agency that is required to revise a statement of estimated regulatory costs shall provide the statement to the person who submitted the lower cost regulatory alternative, to the rules ombudsman in the Executive Office of the Governor, and to the committee. The revised statement shall be published and made available in the same manner as the original statement of estimated regulatory costs ~~and shall provide notice on the agency's website that it is available to the public~~.

(e) Notwithstanding s. 120.56(1)(c), the failure of the agency to prepare and publish a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative as provided in this subsection is a material failure to follow the applicable rulemaking procedures or requirements set forth in this chapter.

(f) An agency's failure to prepare a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative may not be raised in a proceeding challenging the validity of a rule pursuant to s. 120.52(8)(a) unless:

1. Raised in a petition filed no later than 1 year after the effective date of the rule; and

2. Raised by a person whose substantial interests are affected by the rule's regulatory costs.

(g) A rule that is challenged pursuant to s. 120.52(8)(f) may not be declared invalid unless:

1. The issue is raised in an administrative proceeding within 1 year after the effective date of the rule;

2. The challenge is to the agency's rejection of a lower cost regulatory alternative offered under paragraph (a) or s. 120.54(3)(b)2.c. ~~s. 120.54(3)(b)2.b.~~; and

3. The substantial interests of the person challenging the rule are materially affected by the rejection.

(2) A statement of estimated regulatory costs must ~~shall~~ include:

(a) An economic analysis showing whether the rule directly or indirectly:

1. Is likely to have an adverse impact on economic growth,

private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within 5 years after the implementation of the rule;

2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within 5 years after the implementation of the rule; or

3. Is likely to increase regulatory costs, including all ~~any transactional~~ costs and impacts estimated in the statement, in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

(b) A good faith estimate of the number of individuals, small businesses, and other entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

(c) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

(d) A good faith estimate of the compliance ~~transactional~~ costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. ~~As used in this section, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures~~

~~required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.~~

(e) An analysis of the impact on small businesses as defined by s. 288.703, and an analysis of the impact on small counties and small cities as defined in s. 120.52. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.

(f) Any additional information that the agency determines may be useful.

(g) In the statement or revised statement, whichever applies, a description of any regulatory alternatives submitted under paragraph (1)(a) and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(3) If the adverse impact or regulatory costs of the rule exceed any of the criteria established in paragraph (2)(a), the rule shall be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days before ~~prior to~~ the next regular legislative session, and the rule may not take effect until it is ratified by the Legislature.

(4) Subsection (3) does not apply to the adoption of:

(a) Federal standards pursuant to s. 120.54(6).

(b) Triennial updates of and amendments to the Florida Building Code which are expressly authorized by s. 553.73.

(c) Triennial updates of and amendments to the Florida Fire Prevention Code which are expressly authorized by s. 633.202.

(d) Emergency rules adopted pursuant to s. 120.54(4).

(5) For purposes of subsections (2) and (3), adverse impacts and regulatory costs likely to occur within 5 years after implementation of the rule include adverse impacts and regulatory costs estimated to occur within 5 years after the effective date of the rule. However, if any provision of the rule is not fully implemented upon the effective date of the rule, the adverse impacts and regulatory costs associated with such provision must be adjusted to include any additional adverse impacts and regulatory costs estimated to occur within 5 years after implementation of such provision.

(6)(a) In evaluating the impacts described in paragraphs (2)(a) and (2)(e), an agency shall include good faith estimates of market impacts likely to result from compliance with the proposed rule, including:

1. Increased customer charges for goods or services.

2. Decreased market value of goods or services produced, provided, or sold.

3. Increased costs resulting from the purchase of substitute or alternative goods or services.

4. The reasonable value of time to be spent by owners, officers, operators, and managers to understand and comply with the proposed rule, including, but not limited to, time to be spent to complete required education, training, or testing.

5. Capital costs.

6. Any other impacts suggested by the rules ombudsman in the Executive Office of the Governor or interested persons.

(b) In estimating and analyzing the information required in paragraphs (2)(b)-(e), the agency may use surveys of

individuals, businesses, business organizations, counties, or municipalities to collect data useful to estimate and analyze the costs and impacts.

(c) In estimating compliance costs under paragraph (2)(d), the agency shall consider, among other matters, all direct and indirect costs necessary to comply with the proposed rule which are readily ascertainable based upon standard business practices, including, but not limited to, costs related to:

1. Filing fees.

2. Expenses to obtain a license.

3. Necessary equipment.

4. Installation, utilities, and maintenance of necessary equipment.

5. Necessary operations and procedures.

6. Accounting, financial, information management, and other administrative processes.

7. Other processes.

8. Labor based on relevant rates of wages, salaries, and benefits.

9. Materials and supplies.

10. Capital expenditures, including financing costs.

11. Professional and technical services, including contracted services necessary to achieve and maintain compliance.

12. Monitoring and reporting.

13. Qualifying and recurring education, training, and testing.

14. Travel.

15. Insurance and surety requirements.

16. A fair and reasonable allocation of administrative costs and other overhead.

17. Reduced sales or other revenues.

18. Other items suggested by the rules ombudsman in the Executive Office of the Governor or any interested person, business organization, or business representative.

(7)(a) The Department of State shall include on the Florida Administrative Register website the agency website addresses where statements of estimated regulatory costs can be viewed in their entirety.

(b) As part of the notice required under s. 120.54(3)(a), an agency that prepares a statement of estimated regulatory costs must provide to the Department of State for publication in the Florida Administrative Register the agency website address where the statement of estimated regulatory costs can be read in its entirety.

(c) If an agency revises its statement of estimated regulatory costs, the agency must provide notice that a revision has been made as provided in s. 120.54(3)(d). Such notice must include the agency website address where the revision can be viewed in its entirety.

Section 4. Section 120.5435, Florida Statutes, is created to read:

120.5435 Repromulgation of rules.—

(1) It is the intent of the Legislature that each agency periodically review its rules for consistency with the powers and duties granted by its enabling statutes.

(2) If an agency determines after review that substantive changes to update a rule are not required, the agency must

repromulgate the rule to reflect the date of the review. Each agency shall review its rules pursuant to this section either 5 years after July 1, 2022, if the rule was adopted before January 1, 2014, or 10 years after the rule was adopted, if the rule was adopted on or after January 1, 2014. Failure of an agency to adhere to the deadlines imposed in this section constitutes the repeal of any affected rule. In the event of such a failure, the committee shall notify the Department of State that the agency, by its failure to repromulgate the affected rule, has elected to repeal the rule. Upon receipt of the committee's notice, the Department of State shall publish a notice to that effect in the next available issue of the Florida Administrative Register. Upon publication of the notice, the rule shall be stricken from the files of the Department of State and the files of the agency.

(3) Before repromulgation of a rule, the agency must, upon approval by the agency head or his or her designee:

(a) Publish a notice of repromulgation in the Florida Administrative Register. A notice of repromulgation is not required to include the text of the rule being repromulgated.

(b) File the rule for repromulgation with the Department of State. A rule may not be filed for repromulgation fewer than 28 days, nor more than 90 days, after the date of publication of the notice required by paragraph (a).

(4) The agency shall file a notice of repromulgation with the committee at least 14 days before filing the rule for repromulgation. At the time the rule is filed for repromulgation, the committee shall certify whether the agency has responded in writing to all material and timely written

comments or written inquiries made on behalf of the committee.

(5) A repromulgated rule is not subject to challenge as a proposed rule pursuant to s. 120.56(2).

(6) The hearing requirements of s. 120.54 do not apply to repromulgation of a rule.

(7)(a) The agency, upon approval of the agency head or his or her designee, shall file with the Department of State three certified copies of the repromulgated rule it proposes to adopt and one certified copy of any material incorporated by reference in the rule.

(b) The repromulgated rule shall be adopted upon filing with the Department of State and becomes effective 20 days after the date it is filed.

(c) The Department of State shall update the history note of the rule in the Florida Administrative Code to reflect the effective date of the repromulgated rule.

(8) The Department of State shall adopt rules to implement this section by December 31, 2022.

Section 5. Subsection (1) of section 120.545, Florida Statutes, is amended to read:

120.545 Committee review of agency rules.—

(1) As a legislative check on legislatively created authority, the committee shall examine each existing rule and proposed rule, except for those proposed rules exempted by s. 120.81(1)(e) and (2), and its accompanying material, and each emergency rule, ~~and may examine any existing rule,~~ for the purpose of determining whether:

(a) The rule is an invalid exercise of delegated legislative authority.

(b) The statutory authority for the rule has been repealed.

(c) The rule reiterates or paraphrases statutory material.

(d) The rule is in proper form.

(e) The notice given before ~~prior to~~ its adoption was sufficient to give adequate notice of the purpose and effect of the rule.

(f) The rule is consistent with expressed legislative intent pertaining to the specific provisions of law which the rule implements.

(g) The rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law which the rule implements.

(h) The rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule.

(i) The rule could be made less complex or more easily comprehensible to the general public.

(j) The rule's statement of estimated regulatory costs complies with the requirements of s. 120.541 and whether the rule does not impose regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

(k) The rule will require additional appropriations.

(l) If the rule is an emergency rule, there exists an emergency justifying the adoption of such rule, the agency is within its statutory authority, and the rule was adopted in compliance with the requirements and limitations of s. 120.54(4).

Section 6. Paragraphs (a) and (c) of subsection (1) of section 120.55, Florida Statutes, are amended to read:

120.55 Publication.—

(1) The Department of State shall:

(a)1. Through a continuous revision and publication system, compile and publish electronically, on a website managed by the department, the "Florida Administrative Code." The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(7), complete indexes to all rules contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code shall display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department may contract with a publishing firm for a printed publication; however, the department shall retain responsibility for the code as provided in this section. The electronic publication shall be the official compilation of the administrative rules of this state. The Florida Administrative Code shall be published once daily by 8 a.m. If, after publication, a rule is corrected and replaced, the Florida Administrative Code must indicate:

a. That the Florida Administrative Code has been republished.

b. The rule that has been corrected by the Department of State.

The Department of State shall retain the copyright over the

Florida Administrative Code.

2. Not publish in the Florida Administrative Code rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance ~~shall not be published in the Florida Administrative Code~~. Exclusion from publication in the Florida Administrative Code does ~~shall~~ not affect the validity or effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, ~~the department shall~~ publish the address and telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to where those rules may be inspected.

4. Not publish forms ~~shall not be published~~ in the Florida Administrative Code; but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of "rule" provided in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of

the form and the number of the rule in which the form is incorporated.

5. Require all materials incorporated by reference in any part of an adopted rule and in any part of a repromulgated rule ~~The department shall allow adopted rules and material incorporated by reference~~ to be filed in the manner prescribed by s. 120.54(1)(i)3.a. or s. 120.54(1)(i)3.b. ~~electronic form as prescribed by department rule.~~ When a rule is filed for adoption or repromulgation with incorporated material in electronic form, the department's publication of the Florida Administrative Code on its website must contain a hyperlink from the incorporating reference in the rule directly to that material. The department may not allow hyperlinks from rules in the Florida Administrative Code to any material other than that filed with and maintained by the department, but may allow hyperlinks to incorporated material maintained by the department from the adopting agency's website or other sites.

6. Include the date of any technical changes to a rule in the history note of the rule in the Florida Administrative Code. A technical change does not affect the effective date of the rule.

(c) Prescribe by rule the style and form required for rules, notices, and other materials submitted for filing, including a rule requiring documents created by an agency which are proposed to be incorporated by reference in notices published pursuant to s. 120.54(3)(a) and (d) to be coded in the same manner as notices published pursuant to s. 120.54(3)(a)1.

Section 7. Subsection (1) and paragraph (a) of subsection (2) of section 120.74, Florida Statutes, are amended to read:

120.74 Agency annual rulemaking and regulatory plans; reports.—

(1) REGULATORY PLAN.—By October 1 of each year, each agency shall prepare a regulatory plan.

(a) The plan must include a listing of each law enacted or amended during the previous 12 months which creates or modifies the duties or authority of the agency. If the Governor or the Attorney General provides a letter to the committee stating that a law affects all or most agencies, the agency may exclude the law from its plan. For each law listed by an agency under this paragraph, the plan must state:

1. Whether the agency must adopt rules to implement the law.

2. If rulemaking is necessary to implement the law:

a. Whether a notice of rule development has been published and, if so, the citation to such notice in the Florida Administrative Register.

b. The date by which the agency expects to publish the notice of proposed rule under s. 120.54(3)(a).

3. If rulemaking is not necessary to implement the law, a concise written explanation of the reasons why the law may be implemented without rulemaking.

(b) The plan must also identify and describe each rule, including each rule number or proposed rule number, ~~include a listing of each law not otherwise listed pursuant to paragraph (a)~~ which the agency expects to develop, adopt, or repeal for the 12-month period beginning on October 1 and ending on September 30 ~~implement by rulemaking before the following July 1~~, excluding emergency rules ~~except emergency rulemaking~~. For

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

each rule ~~law~~ listed under this paragraph, the plan must state whether the rulemaking is intended to simplify, clarify, increase efficiency, improve coordination with other agencies, reduce regulatory costs, or delete obsolete, unnecessary, or redundant rules.

(c) The plan must include any desired update to the prior year's regulatory plan or supplement published pursuant to subsection (7). If, in a prior year, a law was identified under this paragraph or under subparagraph (a)1. as a law requiring rulemaking to implement but a notice of proposed rule has not been published:

1. The agency shall identify and again list such law, noting the applicable notice of rule development by citation to the Florida Administrative Register; or

2. If the agency has subsequently determined that rulemaking is not necessary to implement the law, the agency shall identify such law, reference the citation to the applicable notice of rule development in the Florida Administrative Register, and provide a concise written explanation of the reason why the law may be implemented without rulemaking.

(d) The plan must identify any rules required to be repromulgated pursuant to s. 120.5435 for the 12-month period beginning on October 1 and ending on September 30.

(e)~~(d)~~ The plan must include a certification executed on behalf of the agency by both the agency head, or, if the agency head is a collegial body, the presiding officer; and the individual acting as principal legal advisor to the agency head. The certification must declare:

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

1. ~~Verify~~ That the persons executing the certification have reviewed the plan.

2. ~~Verify~~ That the agency regularly reviews all of its rules and identify the period during which all rules have most recently been reviewed to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented.

3. That the agency understands that regulatory accountability is necessary to ensure public confidence in the integrity of state government and, to that end, the agency is diligently working toward lowering the total number of rules adopted.

4. The total number of rules adopted and repealed during the previous 12 months.

(2) PUBLICATION AND DELIVERY TO THE COMMITTEE.—

(a) By October 1 of each year, each agency shall:

1. Publish its regulatory plan on its website or on another state website established for publication of administrative law records. A clearly labeled hyperlink to the current plan must be included on the agency's primary website homepage.

2. Electronically deliver to the committee a copy of the certification required in paragraph (1)(e) ~~(1)(d)~~.

3. Publish in the Florida Administrative Register a notice identifying the date of publication of the agency's regulatory plan. The notice must include a hyperlink or website address providing direct access to the published plan.

Section 8. Subsection (11) of section 120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.—

(11) NATIONAL GUARD.—Notwithstanding s. 120.52(17) ~~s. 120.52(16)~~, the enlistment, organization, administration, equipment, maintenance, training, and discipline of the militia, National Guard, organized militia, and unorganized militia, as provided by s. 2, Art. X of the State Constitution, are not rules as defined by this chapter.

Section 9. Paragraph (c) of subsection (1) of section 120.81, Florida Statutes, is amended to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(c) Notwithstanding s. 120.52(17) ~~s. 120.52(16)~~, any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. 1003.4282, s. 1008.22, or s. 1008.25, or any other statewide educational tests required by law, are not rules.

Section 10. Paragraph (a) of subsection (1) of section 420.9072, Florida Statutes, is amended to read:

420.9072 State Housing Initiatives Partnership Program.—The State Housing Initiatives Partnership Program is created for the purpose of providing funds to counties and eligible municipalities as an incentive for the creation of local housing partnerships, to expand production of and preserve affordable housing, to further the housing element of the local government comprehensive plan specific to affordable housing, and to increase housing-related employment.

(1)(a) In addition to the legislative findings set forth in s. 420.6015, the Legislature finds that affordable housing is most effectively provided by combining available public and

private resources to conserve and improve existing housing and provide new housing for very-low-income households, low-income households, and moderate-income households. The Legislature intends to encourage partnerships in order to secure the benefits of cooperation by the public and private sectors and to reduce the cost of housing for the target group by effectively combining all available resources and cost-saving measures. The Legislature further intends that local governments achieve this combination of resources by encouraging active partnerships between government, lenders, builders and developers, real estate professionals, advocates for low-income persons, and community groups to produce affordable housing and provide related services. Extending the partnership concept to encompass cooperative efforts among small counties as defined in s. 120.52 ~~s. 120.52(19)~~, and among counties and municipalities is specifically encouraged. Local governments are also intended to establish an affordable housing advisory committee to recommend monetary and nonmonetary incentives for affordable housing as provided in s. 420.9076.

Section 11. Subsection (7) of section 420.9075, Florida Statutes, is amended to read:

420.9075 Local housing assistance plans; partnerships.—

(7) The moneys deposited in the local housing assistance trust fund shall be used to administer and implement the local housing assistance plan. The cost of administering the plan may not exceed 5 percent of the local housing distribution moneys and program income deposited into the trust fund. A county or an eligible municipality may not exceed the 5-percent limitation on administrative costs, unless its governing body finds, by

resolution, that 5 percent of the local housing distribution plus 5 percent of program income is insufficient to adequately pay the necessary costs of administering the local housing assistance plan. The cost of administering the program may not exceed 10 percent of the local housing distribution plus 5 percent of program income deposited into the trust fund, except that small counties, as defined in s. 120.52 ~~s. 120.52(19)~~, and eligible municipalities receiving a local housing distribution of up to $350,000 may use up to 10 percent of program income for administrative costs.

Section 12. Paragraph (d) of subsection (1) of section 443.091, Florida Statutes, is amended to read:

443.091 Benefit eligibility conditions.—

(1) An unemployed individual is eligible to receive benefits for any week only if the Department of Economic Opportunity finds that:

(d) She or he is able to work and is available for work. In order to assess eligibility for a claimed week of unemployment, the department shall develop criteria to determine a claimant's ability to work and availability for work. A claimant must be actively seeking work in order to be considered available for work. This means engaging in systematic and sustained efforts to find work, including contacting at least five prospective employers for each week of unemployment claimed. The department may require the claimant to provide proof of such efforts to the one-stop career center as part of reemployment services. A claimant's proof of work search efforts may not include the same prospective employer at the same location in 3 consecutive weeks, unless the employer has indicated since the time of the

initial contact that the employer is hiring. The department shall conduct random reviews of work search information provided by claimants. As an alternative to contacting at least five prospective employers for any week of unemployment claimed, a claimant may, for that same week, report in person to a one-stop career center to meet with a representative of the center and access reemployment services of the center. The center shall keep a record of the services or information provided to the claimant and shall provide the records to the department upon request by the department. However:

1. Notwithstanding any other provision of this paragraph or paragraphs (b) and (e), an otherwise eligible individual may not be denied benefits for any week because she or he is in training with the approval of the department, or by reason of s. 443.101(2) relating to failure to apply for, or refusal to accept, suitable work. Training may be approved by the department in accordance with criteria prescribed by rule. A claimant's eligibility during approved training is contingent upon satisfying eligibility conditions prescribed by rule.

2. Notwithstanding any other provision of this chapter, an otherwise eligible individual who is in training approved under s. 236(a)(1) of the Trade Act of 1974, as amended, may not be determined ineligible or disqualified for benefits due to enrollment in such training or because of leaving work that is not suitable employment to enter such training. As used in this subparagraph, the term "suitable employment" means work of a substantially equal or higher skill level than the worker's past adversely affected employment, as defined for purposes of the Trade Act of 1974, as amended, the wages for which are at least

80 percent of the worker's average weekly wage as determined for purposes of the Trade Act of 1974, as amended.

3. Notwithstanding any other provision of this section, an otherwise eligible individual may not be denied benefits for any week because she or he is before any state or federal court pursuant to a lawfully issued summons to appear for jury duty.

4. Union members who customarily obtain employment through a union hiring hall may satisfy the work search requirements of this paragraph by reporting daily to their union hall.

5. The work search requirements of this paragraph do not apply to persons who are unemployed as a result of a temporary layoff or who are claiming benefits under an approved short-time compensation plan as provided in s. 443.1116.

6. In small counties as defined in s. 120.52 ~~s. 120.52(19)~~, a claimant engaging in systematic and sustained efforts to find work must contact at least three prospective employers for each week of unemployment claimed.

7. The work search requirements of this paragraph do not apply to persons required to participate in reemployment services under paragraph (e).

Section 13. This act shall take effect July 1, 2022.

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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/28/2022	.	
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	.	
	.	

The Committee on Appropriations (Diaz) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present subsections (20), (21), and (22) of section 120.52, Florida Statutes, are redesignated as subsections (21), (22), and (23), respectively, and a new subsection (20) is added to that section, to read:

120.52 Definitions.—As used in this act:

(20) "Technical change" means a change limited to



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correcting grammatical, typographical, or similar errors not affecting the substance of the rule.

Section 2. Subsections (2) and (3) and paragraph (a) of subsection (7) of section 120.54, Florida Statutes, are amended, and paragraphs (e), (f), and (g) are added to subsection (4) of that section, to read:

120.54 Rulemaking.—

(2) RULE DEVELOPMENT; WORKSHOPS; NEGOTIATED RULEMAKING.—

(a)1. Except when the intended action is the repeal of a rule, agencies shall provide notice of the development of proposed rules by publication of a notice of rule development in the Florida Administrative Register before providing notice of a proposed rule as required by paragraph (3)(a). The notice of rule development must ~~shall~~ indicate the subject area to be addressed by rule development, provide a short, plain explanation of the purpose and effect of the proposed rule, cite the grant of rulemaking authority for the proposed rule and the law being implemented ~~specific legal authority for the proposed rule~~, and include the proposed rule number and the preliminary text of the proposed rule ~~rules~~, if available, or a statement of how a person may promptly obtain, without cost, a copy of any preliminary draft, when ~~if~~ available.

2. If a notice of a proposed rule is not filed within 12 months after the notice of rule development, the agency shall withdraw the rule and give notice of the withdrawal in the next available issue of the Florida Administrative Register.

(b) All rules should be drafted in readable language. The language is readable if:

1. It avoids the use of obscure words and unnecessarily



long or complicated constructions; and

2. It avoids the use of unnecessary technical or specialized language that is understood only by members of particular trades or professions.

(c) An agency may hold public workshops for purposes of rule development. If requested in writing by any affected person, an agency must hold public workshops, including workshops in various regions of the state or the agency's service area, for purposes of rule development ~~if requested in writing by any affected person~~, unless the agency head explains in writing why a workshop is unnecessary. The explanation is not final agency action subject to review pursuant to ss. 120.569 and 120.57. The failure to provide the explanation when required may be a material error in procedure pursuant to s. 120.56(1)(c). When a workshop or public hearing is held, the agency must ensure that the persons responsible for preparing the proposed rule are available to explain the agency's proposal and to respond to questions or comments regarding the rule being developed. The workshop may be facilitated or mediated by a neutral third person, or the agency may employ other types of dispute resolution alternatives for the workshop that are appropriate for rule development. Notice of a workshop for rule development must ~~workshop shall~~ be by publication in the Florida Administrative Register not fewer ~~less~~ than 14 days before ~~prior to~~ the date on which the workshop is scheduled to be held and must ~~shall~~ indicate the subject area that ~~which~~ will be addressed; the agency contact person; and the place, date, and time of the workshop.

(d)1. An agency may use negotiated rulemaking in developing


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and adopting rules. The agency should consider the use of negotiated rulemaking when complex rules are being drafted or strong opposition to the rules is anticipated. The agency should consider, but is not limited to considering, whether a balanced committee of interested persons who will negotiate in good faith can be assembled, whether the agency is willing to support the work of the negotiating committee, and whether the agency can use the group consensus as the basis for its proposed rule. Negotiated rulemaking uses a committee of designated representatives to draft a mutually acceptable proposed rule.

2. An agency that chooses to use the negotiated rulemaking process described in this paragraph shall publish in the Florida Administrative Register a notice of negotiated rulemaking that includes a listing of the representative groups that will be invited to participate in the negotiated rulemaking process. Any person who believes that his or her interest is not adequately represented may apply to participate within 30 days after publication of the notice. All meetings of the negotiating committee shall be noticed and open to the public pursuant to ~~the provisions of~~ this chapter. The negotiating committee shall be chaired by a neutral facilitator or mediator.

3. The agency's decision to use negotiated rulemaking, its selection of the representative groups, and approval or denial of an application to participate in the negotiated rulemaking process are not agency action. ~~Nothing in~~ This subparagraph is not intended to affect the rights of a substantially ~~an~~ affected person to challenge a proposed rule developed under this paragraph in accordance with s. 120.56(2).

(3) ADOPTION PROCEDURES.—



(a) *Notices.*—

1. Before ~~Prior to~~ the adoption, amendment, or repeal of any rule other than an emergency rule, an agency, upon approval of the agency head, shall give notice of its intended action, setting forth a short, plain explanation of the purpose and effect of the proposed action; the proposed rule number and the full text of the proposed rule or amendment and a summary thereof; a reference to the grant of rulemaking authority pursuant to which the rule is adopted; and a reference to the section or subsection of the Florida Statutes or the Laws of Florida being implemented or interpreted. The notice must include a summary of the agency's statement of the estimated regulatory costs, if one has been prepared, based on the factors set forth in s. 120.541(2), which describes the regulatory impact of the proposed rule in readable language; an agency website address where the statement of estimated regulatory costs can be viewed in its entirety, if one has been prepared; a statement that any person who wishes to provide the agency with information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided by s. 120.541(1), must do so in writing within 21 days after publication of the notice; and a statement as to whether, based on the statement of the estimated regulatory costs or other information expressly relied upon and described by the agency if no statement of regulatory costs is required, the proposed rule is expected to require legislative ratification pursuant to s. 120.541(3). The notice must state the procedure for requesting a public hearing on the proposed rule. Except when the intended action is the repeal of a rule,



the notice must include a reference both to the date on which and to the place where the notice of rule development that is required by subsection (2) appeared.

2. The notice shall be published in the Florida Administrative Register at least 7 days after the publication of the notice of rule development and at least ~~not less than~~ 28 days before ~~prior to~~ the intended action. The proposed rule, including all materials proposed to be incorporated by reference and the statement of estimated regulatory costs, if one has been prepared, must ~~shall~~ be available for inspection and copying by the public at the time of the publication of notice. After December 31, 2022, material proposed to be incorporated by reference in the notice required by this paragraph must be made available in the manner prescribed by sub-subparagraph (1)(i)3.a. or sub-subparagraph (1)(i)3.b.

3. The notice shall be mailed to all persons named in the proposed rule and mailed or delivered electronically to all persons who, at least 14 days before publication of the notice ~~prior to such mailing~~, have made requests of the agency for advance notice of its proceedings. The agency shall also give such notice as is prescribed by rule to those particular classes of persons to whom the intended action is directed.

4. The adopting agency shall file with the committee, at least 21 days before ~~prior to~~ the proposed adoption date, a copy of each rule it proposes to adopt; a copy of any material incorporated by reference in the rule; a detailed written statement of the facts and circumstances justifying the proposed rule; a copy of any statement of estimated regulatory costs that has been prepared pursuant to s. 120.541; a statement of the


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extent to which the proposed rule relates to federal standards or rules on the same subject; and the notice required by subparagraph 1.

5. If any of the information, other than substantive changes to the rule text, which is required to be included in the notice required by subparagraph 1. is omitted or is incorrect, the agency must publish a notice of correction. A notice of correction does not affect the timeframes for filing the rule for adoption as set forth in paragraph (e). Technical changes are not required to be published as a notice of correction.

(b) *Special matters to be considered in rule adoption.*—

1. Statement of estimated regulatory costs.—Before the adoption, amendment, or repeal of any rule other than an emergency rule, an agency is encouraged to prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541. However, an agency must prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541, if:

a. The proposed rule will have an adverse impact on small business; or

b. The proposed rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in this state within 1 year after the implementation of the rule.

2. Small businesses, small counties, and small cities.—

a. For purposes of this subsection and s. 120.541(2), an adverse impact on small businesses, as defined in s. 288.703 or sub-subparagraph b., exists if, for any small business:

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(I) An owner, officer, operator, or manager must complete any education, training, or testing to comply with the rule in the first year or is likely to spend at least 10 hours or purchase professional advice to understand and comply with the rule in the first year;

(II) Taxes or fees assessed on transactions are likely to increase by $500 or more in the aggregate in 1 year because of the rule;

(III) Prices charged for goods and services are restricted or are likely to increase because of the rule;

(IV) Specially trained, licensed, or tested employees will be required because of the rule;

(V) Operating costs are expected to increase by at least $1,000 annually because of the rule; or

(VI) Capital expenditures in excess of $1,000 are necessary to comply with the rule.

b. Each agency, before the adoption, amendment, or repeal of a rule, shall consider the impact of the rule on small businesses as defined in ~~by~~ s. 288.703 and the impact of the rule on small counties or small cities as defined in ~~by~~ s. 120.52. Whenever practicable, an agency shall tier its rules to reduce disproportionate impacts on small businesses, small counties, or small cities to avoid regulating small businesses, small counties, or small cities that do not contribute significantly to the problem the rule is designed to address. An agency may define "small business" to include businesses employing more than 200 persons, may define "small county" to include those with populations of more than 75,000, and may define "small city" to include those with populations of more



than 10,000, if it finds that such a definition is necessary to adapt a rule to the needs and problems of small businesses, small counties, or small cities. The agency shall consider each of the following methods for reducing the impact of the proposed rule on small businesses, small counties, and small cities, or any combination of these entities:

(I) Establishing less stringent compliance or reporting requirements in the rule.

(II) Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements.

(III) Consolidating or simplifying the rule's compliance or reporting requirements.

(IV) Establishing performance standards or best management practices to replace design or operational standards in the rule.

(V) Exempting small businesses, small counties, or small cities from any or all requirements of the rule.

c.(I) ~~b.(I)~~ If the agency determines that the proposed action will affect small businesses as defined by the agency as provided in sub-subparagraph b. ~~a.~~, the agency shall send written notice of the rule to the rules ombudsman in the Executive Office of the Governor at least 28 days before the intended action.

(II) Each agency shall adopt those regulatory alternatives offered by the rules ombudsman in the Executive Office of the Governor and provided to the agency no later than 21 days after the rules ombudsman's receipt of the written notice of the rule which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the


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impact on small businesses. When regulatory alternatives are offered by the rules ombudsman in the Executive Office of the Governor, the 90-day period for filing the rule in subparagraph (e)2. is extended for a period of 21 days. At least 21 days before filing the rule for adoption, the agency shall provide a copy of any regulatory alternative offered to the agency to the committee.

(III) If an agency does not adopt all alternatives offered pursuant to this sub-subparagraph, it shall, before rule adoption or amendment and pursuant to subparagraph (d)1., file a detailed written statement with the committee explaining the reasons for failure to adopt such alternatives. Within 3 working days after the filing of such notice, the agency shall send a copy of such notice to the rules ombudsman in the Executive Office of the Governor.

(c) *Hearings.*—

1. If the intended action concerns any rule other than one relating exclusively to procedure or practice, the agency shall, on the request of any affected person received within 21 days after the date of publication of the notice of intended agency action, give affected persons an opportunity to present evidence and argument on all issues under consideration. The agency may schedule a public hearing on the proposed rule and, if requested by any affected person, shall schedule a public hearing on the proposed rule. When a public hearing is held, the agency must ensure that staff are available to explain the agency's proposal and to respond to questions or comments regarding the proposed rule. If the agency head is a board or other collegial body created under s. 20.165(4) or s. 20.43(3)(g), and one or more



requested public hearings is scheduled, the board or other collegial body shall conduct at least one of the public hearings itself and may not delegate this responsibility without the consent of those persons requesting the public hearing. Any material pertinent to the issues under consideration submitted to the agency within 21 days after the date of publication of the notice or submitted to the agency between the date of publication of the notice and the end of the final public hearing shall be considered by the agency and made a part of the record of the rulemaking proceeding.

2. Rulemaking proceedings shall be governed solely by the provisions of this section unless a person timely asserts that the person’s substantial interests will be affected in the proceeding and affirmatively demonstrates to the agency that the proceeding does not provide adequate opportunity to protect those interests. If the agency determines that the rulemaking proceeding is not adequate to protect the person’s interests, it shall suspend the rulemaking proceeding and convene a separate proceeding under the provisions of ss. 120.569 and 120.57. The agency shall publish notice of convening a separate proceeding in the Florida Administrative Register. Similarly situated persons may be requested to join and participate in the separate proceeding. Upon conclusion of the separate proceeding, the rulemaking proceeding shall be resumed. All timelines in this section are tolled during any suspension of the rulemaking proceeding under this subparagraph, beginning on the date the notice of convening a separate proceeding is published and resuming on the day after the conclusion of the separate proceeding.


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(d) *Modification or withdrawal of proposed rules.*—

1. After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, if the proposed rule has not been changed from the proposed rule as previously filed with the committee, or contains only technical changes, the adopting agency shall file a notice to that effect with the committee at least 7 days before ~~prior to~~ filing the proposed rule for adoption. Any change, other than a technical change ~~that does not affect the substance of the rule~~, must be supported by the record of public hearings held on the proposed rule, must be in response to written material submitted to the agency within 21 days after the date of publication of the notice of intended agency action or submitted to the agency between the date of publication of the notice and the end of the final public hearing, or must be in response to a proposed objection by the committee. Any change, other than a technical change, to a statement of estimated regulatory costs requires a notice of change. In addition, ~~when~~ any change, other than a technical change, to the text of ~~is made in~~ a proposed rule or any material incorporated by reference requires~~, other than a technical change,~~ the adopting agency to ~~shall~~ provide a copy of a notice of change by certified mail or actual delivery to any person who requests it in writing no later than 21 days after the notice required in paragraph (a). The agency shall file the notice of change with the committee, along with the reasons for the change, and provide the notice of change to persons requesting it, at least 21 days before ~~prior to~~ filing the proposed rule for adoption. The notice of change shall be published in the Florida Administrative Register at least 21


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days before ~~prior to~~ filing the proposed rule for adoption. The notice of change must include a summary of any revision to a statement of estimated regulatory costs required by s. 120.541(1)(c). This subparagraph does not apply to emergency rules adopted pursuant to subsection (4). After December 31, 2022, material proposed to be incorporated by reference in the notice required by this paragraph must be made available in the manner prescribed by sub-subparagraph (1)(i)3.a. or sub-subparagraph (1)(i)3.b.

2. After the notice required by paragraph (a) and before ~~prior to~~ adoption, the agency may withdraw the proposed rule in whole or in part.

3. After the notice required by paragraph (a), the agency shall withdraw the proposed rule if the agency has failed to adopt it within the prescribed timeframes in this chapter. The committee shall notify the agency that it has exceeded the timeframe to adopt the proposed rule. If, 30 days after notice by the committee, the agency has not given notice of the withdrawal of the rule, the committee shall notify the Department of State that the date for adoption of the rule has expired, and the Department of State shall publish a notice of withdrawal of the proposed rule.

4.~~3.~~ After adoption and before the rule becomes effective, a rule may be modified or withdrawn only in the following circumstances:

a. When the committee objects to the rule;

b. When a final order, which is not subject to further appeal, is entered in a rule challenge brought pursuant to s. 120.56 after the date of adoption but before the rule becomes



effective pursuant to subparagraph (e)6.;

c. If the rule requires ratification, when more than 90 days have passed since the rule was filed for adoption without the Legislature ratifying the rule, in which case the rule may be withdrawn but may not be modified; or

d. When the committee notifies the agency that an objection to the rule is being considered, in which case the rule may be modified to extend the effective date by not more than 60 days.

5.~~4.~~ The agency shall give notice of its decision to withdraw or modify a rule in the first available issue of the publication in which the original notice of rulemaking was published, shall notify those persons described in subparagraph (a)3. in accordance with the requirements of that subparagraph, and shall notify the Department of State if the rule is required to be filed with the Department of State.

6.~~5.~~ After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.

(e) *Filing for final adoption; effective date.*—

1. If the adopting agency is required to publish its rules in the Florida Administrative Code, the agency, upon approval of the agency head, shall file with the Department of State three certified copies of the rule it proposes to adopt; one copy of any material incorporated by reference in the rule, certified by the agency; a summary of the rule; a summary of any hearings held on the rule; and a detailed written statement of the facts and circumstances justifying the rule. Agencies not required to publish their rules in the Florida Administrative Code shall file one certified copy of the proposed rule, and the other



material required by this subparagraph, in the office of the agency head, and such rules shall be open to the public.

2. A rule may not be filed for adoption less than 28 days or more than 90 days after the notice required by paragraph (a), until 21 days after the notice of change required by paragraph (d), until 14 days after the final public hearing, until 21 days after a statement of estimated regulatory costs required under s. 120.541 has been provided to all persons who submitted a lower cost regulatory alternative and made available to the public at a readily accessible page on the agency's website, or until the administrative law judge has rendered a decision under s. 120.56(2), whichever applies. When a required notice of change is published before ~~prior to~~ the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after the date of publication. If notice of a public hearing is published before ~~prior to~~ the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after adjournment of the final hearing on the rule, 21 days after receipt of all material authorized to be submitted at the hearing, or 21 days after receipt of the transcript, if one is made, whichever is latest. The term "public hearing" includes any public meeting held by any agency at which the rule is considered. If a petition for an administrative determination under s. 120.56(2) is filed, the period during which a rule must be filed for adoption is extended to 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete.



3. At the time a rule is filed, the agency shall certify that the time limitations prescribed by this paragraph have been complied with, that all statutory rulemaking requirements have been met, and that there is no administrative determination pending on the rule.

4. At the time a rule is filed, the committee shall certify whether the agency has responded in writing to all material and timely written comments or written inquiries made on behalf of the committee. The Department of State shall reject any rule that is not filed within the prescribed time limits; that does not comply with all statutory rulemaking requirements and rules of the Department of State; upon which an agency has not responded in writing to all material and timely written inquiries or written comments; upon which an administrative determination is pending; or which does not include a statement of estimated regulatory costs, if required.

5. If a rule has not been adopted within the time limits imposed by this paragraph or has not been adopted in compliance with all statutory rulemaking requirements, the agency proposing the rule shall withdraw the proposed rule and give notice of its action in the next available issue of the Florida Administrative Register.

6. The proposed rule shall be adopted on being filed with the Department of State and become effective 20 days after being filed, on a later date specified in the notice required by subparagraph (a)1., on a date required by statute, or upon ratification by the Legislature pursuant to s. 120.541(3). Rules not required to be filed with the Department of State shall become effective when adopted by the agency head, on a later


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date specified by rule or statute, or upon ratification by the Legislature pursuant to s. 120.541(3). If the committee notifies an agency that an objection to a rule is being considered, the agency may postpone the adoption of the rule to accommodate review of the rule by the committee. When an agency postpones adoption of a rule to accommodate review by the committee, the 90-day period for filing the rule is tolled until the committee notifies the agency that it has completed its review of the rule.

For the purposes of this paragraph, the term "administrative determination" does not include subsequent judicial review.

(4) EMERGENCY RULES.—

(e) Emergency rules shall be published in the Florida Administrative Code.

(f) An agency may not supersede an emergency rule currently in effect.

(g) An agency may make technical changes to an emergency rule within the first 7 days after the rule is adopted and must publish a notice of the technical change in the Florida Administrative Register.

(7) PETITION TO INITIATE RULEMAKING.—

(a) Any person regulated by an agency or having substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule or to provide the minimum public information required by this chapter. The petition shall specify the proposed rule and action requested. The agency shall file a copy of the petition with the committee. Not later than 30 calendar days following the date of filing a petition, the



agency shall initiate rulemaking proceedings under this chapter, otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial.

Section 3. Section 120.541, Florida Statutes, is amended to read:

120.541 Statement of estimated regulatory costs.—

(1)(a) Within 21 days after publication of the notice of a proposed rule or notice of change ~~required under s. 120.54(3)(a)~~, a substantially affected person may submit to an agency a good faith written proposal for a lower cost regulatory alternative to a proposed rule which substantially accomplishes the objectives of the law being implemented. The agency shall provide a copy of any proposal for a lower cost regulatory alternative to the committee at least 21 days before filing the rule for adoption. The proposal may include the alternative of not adopting any rule if the proposal explains how the lower costs and objectives of the law will be achieved by not adopting any rule. If submitted after a notice of change, a proposal for a lower cost regulatory alternative is deemed to be made in good faith only if the person reasonably believes, and the proposal states the person’s reasons for believing, that the proposed rule as changed by the notice of change increases the regulatory costs or creates an adverse impact on small businesses that was not created by the previous proposed rule. If such a proposal is submitted, the 90-day period for filing the rule is extended 21 days. Upon the submission of the lower cost regulatory alternative, the agency shall prepare a statement of estimated regulatory costs as provided in subsection (2), or shall revise its prior statement of estimated regulatory costs, and ~~either~~


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adopt the alternative proposal, reject the alternative proposal, or modify the proposed rule to reduce the regulatory costs. If the agency rejects the alternative proposal or modifies the proposed rule, the agency shall ~~or~~ provide a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(b) If a proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate within 1 year after the implementation of the rule, the agency shall prepare a statement of estimated regulatory costs as required by s. 120.54(3)(b).

(c) The agency shall revise a statement of estimated regulatory costs if any change to the rule made under s. 120.54(3)(d) increases the regulatory costs of the rule or if the rule is modified in response to the submission of a lower cost regulatory alternative. A summary of the revised statement must be included with any subsequent notice published under s. 120.54(3).

(d) At least 21 days before filing the proposed rule for adoption, an agency that is required to revise a statement of estimated regulatory costs shall provide the statement to the person who submitted the lower cost regulatory alternative, to the rules ombudsman in the Executive Office of the Governor, and to the committee. The revised statement shall be published and made available in the same manner as the original statement of estimated regulatory costs ~~and shall provide notice on the agency's website that it is available to the public~~.

(e) Notwithstanding s. 120.56(1)(c), the failure of the


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agency to prepare and publish a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative as provided in this subsection is a material failure to follow the applicable rulemaking procedures or requirements set forth in this chapter.

(f) An agency's failure to prepare and publish a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative may not be raised in a proceeding challenging the validity of a rule pursuant to s. 120.52(8)(a) unless:

1. Raised in a petition filed no later than 1 year after the effective date of the rule; and

2. Raised by a person whose substantial interests are affected by the rule's regulatory costs.

(g) A rule that is challenged pursuant to s. 120.52(8)(f) may not be declared invalid unless:

1. The issue is raised in an administrative proceeding within 1 year after the effective date of the rule;

2. The challenge is to the agency's rejection of a lower cost regulatory alternative offered under paragraph (a) or s. 120.54(3)(b)2.c. ~~s. 120.54(3)(b)2.b.~~; and

3. The substantial interests of the person challenging the rule are materially affected by the rejection.

(2) A statement of estimated regulatory costs must ~~shall~~ include:

(a) An economic analysis showing whether the rule directly or indirectly:

1. Is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector



investment in excess of $1 million in the aggregate within 5 years after the implementation of the rule;

2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within 5 years after the implementation of the rule; or

3. Is likely to increase regulatory costs, including all ~~any transactional~~ costs and impacts estimated in the statement of estimated regulatory costs, in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

(b) A good faith estimate of the number of individuals, small businesses, and other entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

(c) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

(d) A good faith estimate of the compliance ~~transactional~~ costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. ~~As used in this section, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional~~



~~operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.~~

(e) An analysis of the impact on small businesses as defined in ~~by~~ s. 288.703~~,~~ and an analysis of the impact on small counties and small cities as defined in s. 120.52. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.

(f) Any additional information that the agency determines may be useful.

(g) In the statement or revised statement, whichever applies, a description of any regulatory alternatives submitted under paragraph (1)(a) and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(3) If the adverse impact or regulatory costs of the rule exceed any of the criteria established in paragraph (2)(a), the rule shall be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days before ~~prior to~~ the next regular legislative session, and the rule may not take effect until it is ratified by the Legislature.

(4) Subsection (3) does not apply to the adoption of:

(a) Federal standards pursuant to s. 120.54(6).

(b) Triennial updates of and amendments to the Florida Building Code which are expressly authorized by s. 553.73.

(c) Triennial updates of and amendments to the Florida Fire Prevention Code which are expressly authorized by s. 633.202.

(d) Emergency rules adopted pursuant to s. 120.54(4).


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(5) For purposes of subsections (2) and (3), adverse impacts and regulatory costs likely to occur within 5 years after implementation of the rule include adverse impacts and regulatory costs estimated to occur within 5 years after the effective date of the rule. However, if any provision of the rule is not fully implemented upon the effective date of the rule, the adverse impacts and regulatory costs associated with such provision must be adjusted to include any additional adverse impacts and regulatory costs estimated to occur within 5 years after implementation of such provision.

(6)(a) In evaluating the impacts described in paragraphs (2)(a) and (e), an agency shall include good faith estimates of market impacts likely to result from compliance with the proposed rule, including:

1. Increased customer charges for goods or services.

2. Decreased market value of goods or services produced, provided, or sold.

3. Increased costs resulting from the purchase of substitute or alternative goods or services.

4. The reasonable value of time to be spent by owners, officers, operators, and managers to understand and comply with the proposed rule, including, but not limited to, time to be spent to complete required education, training, or testing.

5. Capital costs.

6. Any other impacts suggested by the rules ombudsman in the Executive Office of the Governor or interested persons.

(b) In estimating and analyzing the information required in paragraphs (2)(b)-(e), the agency may use surveys of individuals, businesses, business organizations, counties, and



municipalities to collect data helpful to estimate and analyze the costs and impacts.

(c) In estimating compliance costs under paragraph (2)(d), the agency shall consider, among other matters, all direct and indirect costs necessary to comply with the proposed rule that are readily ascertainable based upon standard business practices, including, but not limited to, costs related to:

1. Filing fees.

2. Expenses to obtain a license.

3. Necessary equipment.

4. Installation, utilities, and maintenance of necessary equipment.

5. Necessary operations and procedures.

6. Accounting, financial, information management, and other administrative processes.

7. Other processes.

8. Labor based on relevant rates of wages, salaries, and benefits.

9. Materials and supplies.

10. Capital expenditures, including financing costs.

11. Professional and technical services, including contracted services necessary to implement and maintain compliance.

12. Monitoring and reporting.

13. Qualifying and recurring education, training, and testing.

14. Travel.

15. Insurance and surety requirements.

16. A fair and reasonable allocation of administrative



costs and other overhead.

17. Reduced sales or other revenues.

18. Other items suggested by the rules ombudsman in the Executive Office of the Governor or any interested person, business organization, or business representative.

(7)(a) The Department of State shall include on the Florida Administrative Register website the agency website addresses where statements of estimated regulatory costs may be viewed in their entirety.

(b) An agency that prepares a statement of estimated regulatory costs must provide, as part of the notice required under s. 120.54(3)(a), the agency website address where the statement of estimated regulatory costs can be read in its entirety to the Department of State for publication in the Florida Administrative Register.

(c) If an agency revises its statement of estimated regulatory costs, the agency must provide notice that a revision has been made as provided in s. 120.54(3)(d). Such notice must include the agency website address where the revision can be viewed in its entirety.

Section 4. Subsections (1) and (2) of section 120.545, Florida Statutes, are amended to read:

120.545 Committee review of agency rules.—

(1) As a legislative check on legislatively created authority, the committee shall examine each existing rule and proposed rule, except for those proposed rules exempted by s. 120.81(1)(e) and (2), and its accompanying material, and each emergency rule, ~~and may examine any existing rule,~~ for the purpose of determining whether:



(a) The rule is an invalid exercise of delegated legislative authority.

(b) The statutory authority for the rule has been repealed.

(c) The rule reiterates or paraphrases statutory material.

(d) The rule is in proper form.

(e) The notice given before ~~prior to~~ its adoption was sufficient to give adequate notice of the purpose and effect of the rule.

(f) The rule is consistent with expressed legislative intent pertaining to the specific provisions of law which the rule implements.

(g) The rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law which the rule implements.

(h) The rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule.

(i) The rule could be made less complex or more easily comprehensible to the general public.

(j) The rule’s statement of estimated regulatory costs complies with the requirements of s. 120.541 and whether the rule does not impose regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

(k) The rule will require additional appropriations.

(l) If the rule is an emergency rule, there exists an emergency justifying the adoption of such rule, the agency is within its statutory authority, and the rule was adopted in



compliance with the requirements and limitations of s. 120.54(4).

(2) The committee may request from an agency such information as is reasonably necessary for examination of a rule as required by subsection (1). The committee shall consult with legislative standing committees having jurisdiction over the subject areas. If the committee objects to a rule, the committee shall, within 5 days after the objection, certify that fact to the agency whose rule has been examined and include with the certification a statement detailing its objections with particularity. The committee may file an objection for the failure of an agency to repeal or amend an existing rule which the committee identifies as being inconsistent with the powers and duties granted by its enabling statute or having no enabling statute. The committee shall notify the Speaker of the House of Representatives and the President of the Senate of any objection to an agency rule concurrent with certification of that fact to the agency. Such notice shall include a copy of the rule and the statement detailing the committee's objections to the rule.

Section 5. Paragraphs (a), (b), and (c) of subsection (1) of section 120.55, Florida Statutes, are amended to read:

120.55 Publication.—

(1) The Department of State shall:

(a)1. Through a continuous revision and publication system, compile and publish electronically, on a website managed by the department, the "Florida Administrative Code." The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was



adopted, all history notes as authorized in s. 120.545(7), complete indexes to all rules and any material incorporated by reference contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code shall display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department may contract with a publishing firm for a printed publication; however, the department shall retain responsibility for the code as provided in this section. The electronic publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.

2. Not publish in the Florida Administrative Code rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance ~~shall not be published in the Florida Administrative Code~~. Exclusion from publication in the Florida Administrative Code does ~~shall~~ not affect the validity or effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, ~~the department shall~~ publish the address and telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, a listing of all forms and material incorporated by reference adopted by rule which are used by the agency, and a statement as to where those rules may be inspected.


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4. Not publish forms ~~shall not be published~~ in the Florida Administrative Code. However,~~; but~~ any form that ~~which~~ an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of the term "rule" as defined ~~provided~~ in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.

5. Require all materials incorporated by reference in any part of an adopted rule after December 31, 2022, ~~The department shall allow adopted rules and material incorporated by reference~~ to be filed in the manner prescribed by s. 120.54(1)(i)3.a. or b. ~~electronic form as prescribed by department rule.~~ When a rule is filed for adoption with incorporated material in electronic form, the department's publication of the Florida Administrative Code on its website must contain a hyperlink from the incorporating reference in the rule directly to that material. The department may not allow hyperlinks from rules in the Florida Administrative Code to any material other than that filed with and maintained by the department, but may allow hyperlinks to incorporated material maintained by the department from the adopting agency's website or other sites.


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6. Include the date of any technical changes to a rule in the history note of the rule in the Florida Administrative Code. A technical change does not affect the effective date of the rule. A technical change made after the adoption of a rule must be published as a notice of correction.

(b)1. Electronically publish on a website managed by the department a continuous revision and publication entitled the "Florida Administrative Register," which shall serve as the official publication. The Florida Administrative Register shall be published once daily by 8 a.m. If after publication, a rule is corrected and replaced, the Florida Administrative Register shall indicate:

a. That the Florida Administrative Register has been republished.

b. The rule that has been corrected by the Department of State.

2. The Florida Administrative Register ~~and~~ must contain:

a.~~1.~~ All notices required by s. 120.54(2) and (3)(a), showing the text of all rules proposed for consideration.

b.~~2.~~ All notices of public meetings, hearings, and workshops conducted in accordance with s. 120.525, including a statement of the manner in which a copy of the agenda may be obtained.

c.~~3.~~ A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules.

d.~~4.~~ Notice of petitions for declaratory statements or administrative determinations.

e.~~5.~~ A summary of each objection to any rule filed by the


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Administrative Procedures Committee.

f.~~6.~~ A list of rules filed for adoption in the previous 7 days.

g.~~7.~~ A list of all rules filed for adoption pending legislative ratification under s. 120.541(3). A rule shall be removed from the list once notice of ratification or withdrawal of the rule is received.

h.~~8.~~ Any other material required or authorized by law or deemed useful by the department.

The department may contract with a publishing firm for a printed publication of the Florida Administrative Register and make copies available on an annual subscription basis.

(c) Prescribe by rule the style and form required for rules, notices, and other materials submitted for filing, including a rule requiring documents created by an agency that are proposed to be incorporated by reference in notices published pursuant to s. 120.54(3)(a) and (d) to be coded in the same manner as notices published pursuant to s. 120.54(3)(a)1.

Section 6. Section 120.74, Florida Statutes, is amended to read:

120.74 Agency annual rulemaking and regulatory plans; reports.—

(1) REGULATORY PLAN.—By October 1 of each year, each agency shall prepare a regulatory plan.

(a) The plan must include a listing of each law enacted or amended during the previous 12 months which creates or modifies the duties or authority of the agency. If the Governor or the Attorney General provides a letter to the committee stating that



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a law affects all or most agencies, the agency may exclude the law from its plan. For each law listed by an agency under this paragraph, the plan must state:

1. Whether the agency must adopt rules to implement the law.

2. If rulemaking is necessary to implement the law:

a. Whether a notice of rule development has been published and, if so, the citation to such notice in the Florida Administrative Register.

b. The date by which the agency expects to publish the notice of proposed rule under s. 120.54(3)(a).

3. If rulemaking is not necessary to implement the law, a concise written explanation of the reasons why the law may be implemented without rulemaking.

(b) The plan must also identify and describe each rule, including each rule number or proposed rule number, that ~~include a listing of each law not otherwise listed pursuant to paragraph (a) which~~ the agency expects to develop, adopt, or repeal for the 12-month period beginning on October 1 and ending on September 30 ~~implement by rulemaking before the following July 1~~, excluding emergency rules ~~except emergency rulemaking~~. For each rule identified and described ~~law listed~~ under this paragraph, the plan must state whether the rulemaking is intended to simplify, clarify, increase efficiency, improve coordination with other agencies, reduce regulatory costs, or delete obsolete, unnecessary, or redundant rules.

(c) The plan must include any desired update to the prior year's regulatory plan or supplement published pursuant to subsection (7). If, in a prior year, a law was identified under



this paragraph or under subparagraph (a)1. as a law requiring rulemaking to implement but a notice of proposed rule has not been published:

1. The agency shall identify and again list such law, noting the applicable notice of rule development by citation to the Florida Administrative Register; or

2. If the agency has subsequently determined that rulemaking is not necessary to implement the law, the agency shall identify such law, reference the citation to the applicable notice of rule development in the Florida Administrative Register, and provide a concise written explanation of the reason why the law may be implemented without rulemaking.

(d)1. The plan must include a schedule for the agency to review its rules for consistency with the powers and duties granted by the enabling statutes in accordance with this paragraph. Each agency must review all of its rules existing before July 1, 2022, in accordance with this paragraph by July 1, 2027. All rules adopted on or after July 1, 2022, and all existing rules reviewed initially by July 1, 2027, shall be reviewed every 10 years after their respective dates of adoption or review. This schedule shall be updated on an annual basis to ensure that all rules are reviewed every 10 years after their respective dates of adoption or review.

2. The plan must include an index and summary of rules reviewed during the previous year listed by number and title. The index must indicate:

a. The rules reviewed pursuant to this paragraph that are consistent with the powers and duties granted by the enabling

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statutes.

b. The rules reviewed pursuant to this paragraph that require amendments to remove portions of the rule that are inconsistent with the powers and duties granted by the enabling statute. A summary of the required amendments and a schedule for such rulemaking shall be provided.

c. The rules reviewed pursuant to this paragraph that will be repealed in their entirety because there is no enabling statute. A schedule for the repeal of such rules shall be provided.

d. A list of all statutes and laws, or parts thereof, that grant duplicative, redundant, or unused rulemaking authority, as set out in s. 11.242(5)(j), and a recommendation as to what statutes, laws, or parts thereof, should be repealed. The agency must also provide the list to the Division of Law Revision.

(e) The plan must include a certification executed on behalf of the agency by both the agency head, or, if the agency head is a collegial body, the presiding officer; and the individual acting as principal legal advisor to the agency head. The certification must declare:

1. ~~Verify~~ That the persons executing the certification have reviewed the plan.

2. ~~Verify~~ That the agency regularly reviews all of its rules and identify the period during which all rules have most recently been reviewed to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented.

3. That the agency understands that regulatory accountability is necessary to ensure public confidence in the


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integrity of state government and, to that end, the agency is diligently working toward reducing the number of regulatory requirements consistent with the agency's rulemaking authority and the laws implemented.

4. The total number of rules adopted and repealed during the previous 12 months.

5. That all actions set forth in the prior annual regulatory plan have been completed or are on a schedule to be completed.

6. That all materials incorporated by reference in the rules reviewed are available in the manner prescribed by s. 120.54(1)(i)3.a. or b.

(2) PUBLICATION AND DELIVERY TO THE COMMITTEE.—

(a) By October 1 of each year, each agency shall:

1. Publish its regulatory plan on its website or on another state website established for publication of administrative law records. A clearly labeled hyperlink to the current plan must be included on the agency's primary website homepage.

2. Electronically deliver to the committee a copy of the certification required in paragraph (1)(e) ~~(1)(d)~~.

3. Publish in the Florida Administrative Register a notice identifying the date of publication of the agency's regulatory plan. The notice must include a hyperlink or website address providing direct access to the published plan.

(b) To satisfy the requirements of paragraph (a), a board established under s. 20.165(4), and any other board or commission receiving administrative support from the Department of Business and Professional Regulation, may coordinate with the Department of Business and Professional Regulation, and a board



established under s. 20.43(3)(g) may coordinate with the Department of Health, for inclusion of the board's or commission's plan and notice of publication in the coordinating department's plan and notice and for the delivery of the required documentation to the committee.

(c) A regulatory plan prepared under subsection (1) and any regulatory plan published under this chapter before July 1, 2014, shall be maintained at an active website for 10 years after the date of initial publication on the agency's website or another state website.

(3) DEPARTMENT REVIEW OF BOARD PLAN.—By October 15 of each year:

(a) For each board established under s. 20.165(4) and any other board or commission receiving administrative support from the Department of Business and Professional Regulation, the Department of Business and Professional Regulation shall file with the committee a certification that the department has reviewed each board's and commission's regulatory plan. A certification may relate to more than one board or commission.

(b) For each board established under s. 20.43(3)(g), the Department of Health shall file with the committee a certification that the department has reviewed the board's regulatory plan. A certification may relate to more than one board.

(4) DEADLINE FOR RULE DEVELOPMENT.—By November 1 of each year, each agency shall publish a notice of rule development under s. 120.54(2) for each law identified in the agency's regulatory plan pursuant to subparagraph (1)(a)1. for which rulemaking is necessary to implement but for which the agency



did not report the publication of a notice of rule development under subparagraph (1)(a)2.

(5) DEADLINE TO PUBLISH PROPOSED RULE.—For each law for which implementing rulemaking is necessary as identified in the agency's plan pursuant to subparagraph (1)(a)1. or subparagraph (1)(c)1., the agency shall publish a notice of proposed rule pursuant to s. 120.54(3)(a) by April 1 of the year following the deadline for the regulatory plan. This deadline may be extended if the agency publishes a notice of extension in the Florida Administrative Register identifying each rulemaking proceeding for which an extension is being noticed by citation to the applicable notice of rule development as published in the Florida Administrative Register. The agency shall include a concise statement in the notice of extension identifying any issues that are causing the delay in rulemaking. An extension shall expire on October 1 after the April 1 deadline, provided that the regulatory plan due on October 1 may further extend the rulemaking proceeding by identification pursuant to subparagraph (1)(c)1. or conclude the rulemaking proceeding by identification pursuant to subparagraph (1)(c)2. A published regulatory plan may be corrected at any time to accomplish the purpose of extending or concluding an affected rulemaking proceeding and is deemed corrected as of the October 1 due date. Upon publication of a correction, the agency shall publish in the Florida Administrative Register a notice of the date of the correction identifying the affected rulemaking proceeding by applicable citation to the Florida Administrative Register.

(6) CERTIFICATIONS.—Each agency shall file a certification with the committee upon compliance with subsection (4) and upon



filing a notice under subsection (5) of either a deadline extension or a regulatory plan correction. A certification may relate to more than one notice or contemporaneous act. The date or dates of compliance shall be noted in each certification.

(7) SUPPLEMENTING THE REGULATORY PLAN.—After publication of the regulatory plan, the agency shall supplement the plan within 30 days after a bill becomes a law if the law is enacted before the next regular session of the Legislature and the law substantively modifies the agency's specifically delegated legal duties, unless the law affects all or most state agencies as identified by letter to the committee from the Governor or the Attorney General. The supplement must include the information required in paragraph (1)(a) and shall be published as required in subsection (2), but no certification or delivery to the committee is required. The agency shall publish in the Florida Administrative Register notice of publication of the supplement, and include a hyperlink on its website or web address for direct access to the published supplement. For each law reported in the supplement, if rulemaking is necessary to implement the law, the agency shall publish a notice of rule development by the later of the date provided in subsection (4) or 60 days after the bill becomes a law, and a notice of proposed rule shall be published by the later of the date provided in subsection (5) or 120 days after the bill becomes a law. The proposed rule deadline may be extended to the following October 1 by notice as provided in subsection (5). If such proposed rule has not been filed by October 1, a law included in a supplement shall also be included in the next annual plan pursuant to subsection (1).

(8) FAILURE TO COMPLY.—If an agency fails to comply with a


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requirement of subsection (1), paragraph (2)(a), or subsection (5), within 15 days after written demand from the committee or from the chair of any other legislative committee, the agency shall deliver a written explanation of the reasons for noncompliance to the committee, the President of the Senate, the Speaker of the House of Representatives, and the chair of any legislative committee requesting the explanation of the reasons for noncompliance.

(9) EDUCATIONAL UNITS.—This section does not apply to educational units.

Section 7. 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 administrative procedures; amending s. 120.52, F.S.; defining the term "technical change"; amending s. 120.54, F.S.; requiring a notice of rule development to include certain information; requiring a notice of withdrawal if a notice of proposed rule is not filed within a certain timeframe; requiring a notice of proposed rule to include certain information; requiring certain notices to be published within a specified timeframe; requiring that material proposed to be incorporated by reference be made available in a specified manner; authorizing electronic delivery of notices to persons who have



requested advance notice of agency rulemaking proceedings; requiring publication of a notice of correction in certain circumstances; providing that a notice of correction does not affect certain timeframes; revising the circumstances under which a proposed rule's adverse impact on small businesses is considered to exist; requiring an agency to provide notice of a regulatory alternative to the Administrative Procedures Committee before filing the rule for adoption; requiring an agency to publish a notice of convening a separate proceeding in certain circumstances; providing that rulemaking timelines are tolled during such separate proceedings; requiring a notice of change for certain changes to a statement of estimated regulatory costs; revising the requirements for the contents of a notice of change; requiring the committee to notify the Department of State that the date for an agency to adopt a rule has expired under certain circumstances; requiring the department to publish a notice of withdrawal under certain circumstances; requiring that certain information be available on the agency's website; requiring emergency rules to be published in the Florida Administrative Code; prohibiting agencies from making changes to emergency rules by superseding the rule; authorizing an agency to make technical changes to an emergency rule during a specified timeframe; requiring publication of a notice of the technical change in the Florida Administrative Register; requiring an agency


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to file a copy of a certain petition with the committee; amending s. 120.541, F.S.; requiring an agency to provide a copy of any proposal for a lower cost regulatory alternative to the committee within a certain timeframe; specifying the circumstances under which such a proposal is made in good faith; revising requirements for an agency's consideration of a lower cost regulatory alternative; providing for an agency's revision and publication of a revised statement of estimated regulatory costs in response to certain circumstances; requiring that a revised statement of lower cost regulatory alternative be submitted to the rules ombudsman in the Executive Office of the Governor and published in a specified manner; revising the information required in a statement of estimated regulatory cost; deleting the definition of the term "transactional costs"; revising the applicability of specified provisions; providing additional requirements for the calculation of estimated regulatory costs; requiring the department to include specified information on a website; requiring certain agencies to include certain information in a statement of estimated regulatory costs and on their websites; providing certain requirements for an agency that revises a statement of estimated regulatory costs; amending s. 120.545, F.S.; requiring the committee to examine existing rules; authorizing the committee to file an objection in certain instances; amending s. 120.55, F.S.; requiring the Florida Administrative


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Code to contain complete indexes to any material incorporated by reference contained in the code; requiring material incorporated by reference to be filed in a specified manner after a certain date; requiring the department to include the date of a technical change in the Florida Administrative Code; providing that a technical change does not affect the effective date of a rule; requiring a technical change made after rule adoption to be published as a notice of correction; requiring the Florida Administrative Register to be published once daily and indicate certain information; requiring specified rulemaking; amending s. 120.74, F.S.; requiring an agency's regulatory plan to identify and describe each rule the agency plans to develop, adopt, or repeal during a specified 12 month period; requiring such plan to include a schedule of rule review; providing indexes of certain information to be included in such plan; requiring such plan to include a list of certain statutes and laws or parts thereof; requiring the agency to provide such list to the Division of Law Revision; requiring a certification in such plan to make certain declarations; requiring an agency to deliver a written explanation upon request by designated persons for failing to comply with the regulatory plan requirements; providing an effective date.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR MANNY DIAZ, JR.
36th District

COMMITTEES:
Health Policy Chair
Appropriations Subcommittee on Education Vice Chair
Appropriations
Appropriations Subcommittee on Health and Human Services
Education
Commerce and Tourism
Rules

January 25, 2022

Honorable Senator Kelli Stargel
Chair
Committee on Appropriations

Honorable Chair Stargel,

I respectfully request that SB 536 Administrative Procedures be placed in the next committee agenda.

Administrative Procedures applies certain provisions applicable to all rules other than emergency rules to repromulgated rules. It requires an agency to provide notice of a regulatory alternative to the Administrative Procedures Committee within a certain timeframe. It also requires an agency to provide a copy of any proposal for a lower cost regulatory alternative to the committee within a certain timeframe. The agency reviews the repromulgation of rules that do not require substantive changes within a specified timeframe and requires an agency to identify and describe each rule it plans to develop, adopt, or repeal during the forthcoming year in the agency's annual regulatory plan.

Sincerely,

Senator Manny Diaz, Jr.
Florida Senate, District 36

CC: Tim Sadberry, Staff Director
Alicia Weiss, Committee Administrative Assistant
Chad Davis, Legislative Assistant

REPLY TO:
❒ 10001 Northwest 87th Avenue, Hialeah Gardens, Florida 33016 (305) 364-3073
❒ 306 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: *www.flsenate.gov*

Wilton Simpson
President of the Senate

Aaron Bean
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

SB 536

Bill Number or Topic

2/28/2022

Meeting Date

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

Appropriations

Committee

734958

Amendment Barcode (if applicable)

Name Jim Spratt

Phone 850-228-1296

Address 119 S. Monroe Street

Street

Email jim@magnoliastrategies.llc.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:

AIF

☐ 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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2/28/22
Meeting Date

Approps
Committee

524
Bill Number or Topic

Amendment Barcode (if applicable)

Name Carolyn Johnson

Phone 521-1200

Address 136 S Bronough St
Street

Email

Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
FL Chamber of Commerce

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/28/2022
Meeting Date

Appropriations
Committee

SB 536
Bill Number or Topic

Amendment Barcode (if applicable)

Name Christian Camara

Phone 305 608 4300

Address PO Box 122
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:
Institute for Justice

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

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

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 Appropriations

BILL:	CS/SB 554
INTRODUCER:	Military and Veterans Affairs, Space, and Domestic Security Committee and Senator Cruz and others
SUBJECT:	Educational Opportunities for Disabled Veterans
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Caldwell	MS	**Fav/CS**
2.	Grace	Elwell	AED	**Recommend: Favorable**
3.	Grace	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 554 provides an education benefit to certain veterans who are residents and enrolled in a program of education approved by the federal educational assistance program. The bill would increase what is provided in federal law for educational benefits to achieve a 100 percent award for tuition and fees. To qualify, the veteran must have been:

- Determined by the United States Department of Veterans Affairs to have a service-connected total and permanent disability rating of 100 percent for compensation;
- Determined to have a service-connected total and permanent disability rating of 100 percent and have received disability retirement pay from a branch of the United States Armed Services; or
- Issued a valid identification card by the state Department of Veterans' Affairs which identifies the veteran as having a 100 percent, service-connected permanent and total disability rating for compensation; or who has a service-connected total and permanent disability rating of 100 percent and receives disability retirement pay from a branch of the United States Armed Forces.

Beginning with the 2022-2023 academic year, a disabled veteran who receives a tuition benefit to attend a state university, a Florida College System institution, a career center operated by a school district, or a charter technical career center under the Post-9/11 Veterans Educational Assistance Act of 2008, but who does not qualify for the 100 percent eligibility tier federally, is eligible for tuition and fees. The monetary award is equal to the difference between the portion

of tuition and fees authorized under federal law and the full amount of tuition and fees charged by the institution attended. The bill specifies that the amount awarded by the state is not to be determined until after federal benefits are applied.

Each educational institution included in this bill must annually report to the Board of Governors of the State University System and the State Board of Education, as appropriate, the number and value of all fee waivers granted.

The bill provides that a disabled veteran who receives this award must remain in compliance with other statutory requirements applying to veterans and other students who receive educational benefits.

The bill does not have an impact on state revenues or expenditures. *See* Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2022.

II. Present Situation:

Post-9/11 Veterans Educational Assistance Act of 2008 (38 U.S.C. 3313)

Congress enacted the Post-9/11 Veterans' Educational Assistance Act (Act) of 2008, also known as the Post-9/11 GI Bill (GI Bill), which took effect August 1, 2009.[1] The Act provides up to 36 months of educational benefits at a program of education to veterans and servicemembers and their dependent children.[2]

At the time of its passage:

> It was recognized that veterans and servicemembers would be eligible for U.S. Department of Education (ED) student financial aid benefits such as Pell Grants and Stafford Loans; U.S. Department of Defense (DOD) educational assistance; and various state, local, and other federal benefits in addition to the basic Post-9/11 GI Bill Benefits.[3]

To qualify for a benefit under the Act, a veteran or servicemember must:

- Serve an aggregate minimum of 90 days active duty after September 10, 2001;
- Have been honorably discharged or released for a service-connected disability after serving a minimum of 30 continuous days on active duty after September 10, 2001; or
- Be a Purple Heart recipient for service after September 10, 2001, and have been honorably discharged.

---

[1] Pub. L. No. 110-252, 122 STAT. 2323. The GI Bill has since been amended by the Post-9/11 Veterans Assistance Improvements Act of 2010.

[2] In addition to tuition and fees, educational benefits include payment for housing, books, supplies, and other education-related expenditures.

[3] Cassandria Dortch, Congressional Research Service, *The Post-9/11 GI Bill: A Primer (Updated Sept. 23, 2021)*, pg. 1; available at *https://fas.org/sgp/crs/misc/R42755.pdf* (Last visited Dec. 9, 2021). At that time, members of Congress hoped that a benefit exceeding amounts available under the other GI Bills would mitigate the higher unemployment rate amongst veterans in contrast to non-veterans of the same age group.

A qualifying veteran or servicemember may transfer the education benefits to a dependent child. [4]

The Congressional Research Service estimates in FY2022, the program will benefit over 600,000 individuals and expend almost $10 billion.

The percentage of maximum benefits payable under the GI Bill varies and is primarily based on an individual's aggregate length of active duty service. Duration of service as it relates to the maximum benefit payable by percentage currently includes:[5]

Number of Months Served	Percentage of Maximum Benefit Payable
At least 30 continuous days active duty and discharged due to service-connected disability, or	100
At least 36 months of active duty	100
Between 30 and up to 36 months active duty	90
Between 24 and up to 30 months active duty	80
Between 18 and up to 24 months active duty	70
Between 6 and up to 18 months active duty	60
Between 90 days and up to 6 months active duty	50

Amendments to the Post-9/11 Veterans Educational Assistance Act of 2008

Since it was enacted, the Post-9/11 Veterans Educational Assistance Act of 2008 has been amended multiple times. Two of these amending acts are detailed below.

Post-9/11 Veterans Educational Assistance Improvements Act of 2010

The Post-9/11 Veterans Educational Assistance Improvements Act of 2010 (Act) amended the Post-9/11 Veterans Educational Assistance Act of 2008 to, in part:

- Revise the method used by an institution to report the net cost of tuition and fees;
- Expand the definition of "active duty" to include certain servicemembers;
- Expand applicability to include certain dependents and spouses; and
- Expand payment of tuition and fees for programs other than degreed programs, including those pursued on a half-time basis or less, resident training, distance learning, apprenticeships or other on-the-job training, flight training, or correspondence.[6]

Forever GI Bill Stem Extension

Congress passed the Forever GI Bill Stem Extension Act (Act)[7], effective August 1, 2019, to encourage veterans to pursue fields that typically require greater than the 36 months of benefits

[4] U.S. Dept. of Veterans Affairs, *Post-9/11 GI Bill (Chapter 33)*, available at https://www.va.gov/education/about-gi-bill-benefits/post-9-11/ (last visited Dec. 9, 2021).
[5] Cassandria Dortch, Congressional Research Service, *The Post-9/11 GI Bill: A Primer (Updated Sept. 23, 2021)*, pg. 1; available at *https://fas.org/sgp/crs/misc/R42755.pdf* (Last visited Jan. 14, 2022).
[6] Pub. L. No. 111-377 (Jan. 4, 2011).
[7] Pub. L. No. 115-48. The Act is also known as the Edith Nourse Rogers STEM Scholarship, or the Rogers Scholarship.

provided under the Post-9/11 GI Bill. The Act provides an extension of benefits for a veteran pursuing an educational degree in science, technology, engineering, or math. This extension will pay up to 9 months of additional benefits, or up to a maximum lump sum of $30,000. [8]

Disabled Veterans in Florida

The population of veterans in Florida with a 100 percent disability rating is numbered at 55,440 veterans, as of the latest data from 2019. Counties with the highest population of these veterans are Brevard (2,665), Broward (2,897), Duval (2,900), Hillsborough (4,702), Miami-Dade (2,895), Orange (3,101), and Pinellas (3,012).[9]

Residency

Section 1009.21, F.S., defines the term "legal resident," for determination of in-state tuition, a person who has maintained his or her residence in the state for the preceding year, has purchased a home occupied as a residence, or has established domicile in the state.[10] To prove domicile, a person must file a sworn statement with the clerk of the circuit court attesting that either he or she resides in and maintains a place of abode in the county intending to maintain it as a permanent home, or that he or she has established a domicile in the state but maintains at least an additional abode out-of-state; that the place of abode in the state constitutes the predominant and principal home; and that he or she intends to continue it permanently. The sworn statement establishing domicile must include a statement that the person is a bona fide resident of the state, along with the address of residence, prior residence, and the place or places where he or she maintains another abode.[11]

III. Effect of Proposed Changes:

This bill provides an education benefit to certain veterans who are residents and enrolled in a program of education approved by the federal educational assistance program, pursuant to 38 U.S.C. 3313. The bill would increase what is provided in federal law for educational benefits to achieve a 100 percent award for tuition and fees. To qualify, the veteran must have been: Determined by the United States Department of Veterans Affairs to have a service-connected total and permanent disability rating of 100 percent for compensation;

- Determined to have a service-connected total and permanent disability rating of 100 percent and have received disability retirement pay from a branch of the United States Armed Services; or
- Issued a valid identification card by the state Department of Veterans' Affairs which identifies the veteran as having a 100 percent, service-connected permanent and total disability rating for compensation; or who has a service-connected total and permanent

[8] U.S. Department of Veterans Affairs, *Edith Nourse Rogers STEM Scholarship*, available at https://www.va.gov/education/other-va-education-benefits/stem-scholarship/ (last visited Dec. 10, 2021).
[9] Department of Veterans Affairs, *2022 Agency Legislative Bill Analysis, SB 554* (Dec. 9, 2021) (on file with the Senate Committee on Military and Veterans Affairs, Space and Domestic Security).
[10] Section 1009.21(1)(d), F.S.
[11] Section 222.17(3), F.S.

disability rating of 100 percent and receives disability retirement pay from a branch of the United States Armed Forces.

Beginning with the 2022-2023 academic year, a disabled veteran who receives a tuition benefit to attend a state university, a Florida College System institution, a career center operated by a school district, or a charter technical career center under the Post-9/11 Veterans Educational Assistance Act of 2008, but who does not qualify for the 100 percent eligibility tier federally, is eligible for an award of tuition and fees. The award is equal to the difference between the portion of tuition and fees authorized under federal law and the full amount of tuition and fees charged by the institution attended. The bill specifies that the amount awarded by the state is not to be determined until after federal benefits are applied.

Each educational institution included in this bill must report annually to the Board of Governors of the State University System and the State Board of Education, as appropriate, the number and value of all fee waivers granted.

The bill requires the Board of Governors and the State Board of Education to, as appropriate, adopt regulations and rules to administer these provisions.

A disabled veteran who receives this award must remain in compliance with other statutory requirements applying to veterans and other students who receive educational benefits.[12]

The bill takes effect July 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.

[12] Section 295.03, F.S., requires the withdrawal of benefits for a veteran who violates the ordinary and minimum requirements of the institution on discipline and scholarship. Section 295.04(4), F.S., requires a veteran to be in good standing with the institution to receive an educational benefit. Section 295.05, F.S., requires a veteran receiving benefits to be enrolled according to the customary rules and requirements of the institution. Section 1009.40, F.S. provides general requirements for a student (veteran or nonveteran) to be eligible for state financial aid and tuition assistance grants.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill is expected to reduce the costs of tuition, fees, and other education benefits for qualifying veterans.

C. Government Sector Impact:

The Department of Education provides that public postsecondary institutions are expected to incur an increase in expenditures which will be the difference between the Post-9/11 GI benefits and full tuition and fee charges.[13]

Specifically, the expenditure is estimated to cost $100,000 in cash and recurring dollars starting in Fiscal Year 2022-2023.[14]

A cost may also result from public postsecondary institutions having to adjust their process for applicants and include this waiver in financial aid packages. These costs would be absorbed by each institution.

The Department of Education expects a technological impact to the agency due to having to compile and maintain a record of eligible veterans for purposes of the reporting requirement. Any impact would be absorbed by the agency. [15]

The Department of Veterans Affairs expects a minimal fiscal impact based on the new requirement of the department having to certify a veteran as 100-percent disabled.[16]

VI. Technical Deficiencies:

None.

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[13] Department of Education, *2022 Agency Legislative Bill Analysis, HB 0045 identical*, (Dec. 20, 2021)(on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).
[14] Office of Economic and Demographic Research, *2022 Regular Session Revenue Estimating Conference, Impact Conference Results* (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).
[15] Department of Education, *2022 Agency Legislative Bill Analysis, HB 0045 identical*, (Dec. 20, 2021)(on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).
[16] Department of Veterans Affairs, *2022 Agency Legislative Bill Analysis, SB 554* (Dec. 9, 2021) (on file with the Senate Committee on Military and Veterans Affairs, Space and Domestic Security).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 295.011 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 Military and Veterans Affairs, Space, and Domestic Security on January 11, 2022:
The CS:

- Replaces the term "Post-9/11 Veterans Educational Assistance Act" with "38 U.S.C. 3313" to incorporate changes to federal law, as it is amended;
- Specifies that the veteran must be participating in a program of education approved under the federal educational assistance program; and
- Requires that the federal payment be applied before the state cost is determined, to prevent a partial payment of tuition and fees by the state.

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 Cruz

583-01959-22 2022554c1

A bill to be entitled

An act relating to educational opportunities for disabled veterans; creating s. 295.011, F.S.; defining the term "disabled veteran"; providing that disabled veterans receiving certain federal educational assistance benefits are eligible to receive a waiver for the remaining cost of tuition and fees at certain institutions; providing a calculation for waiver amounts; requiring the amount awarded by the state to be contingent on the application of specified federal benefits; requiring certain institutions to submit an annual report to the Board of Governors and the State Board of Education; requiring the boards to respectively adopt regulations and rules; specifying applicability of other laws; providing an effective date.

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

Section 1. Section 295.011, Florida Statutes, is created to read:

295.011 Disabled veterans; education.—

(1) As used in this section, the term "disabled veteran" means an individual who is a resident of this state pursuant to s. 1009.21 and is:

(a) Determined by the United States Department of Veterans Affairs to have a service-connected total and permanent disability rating of 100 percent for compensation;

(b) Determined to have a service-connected total and

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

583-01959-22 2022554c1

permanent disability rating of 100 percent and is in receipt of disability retirement pay from any branch of the United States Armed Services; or

(c) Issued a valid identification card by the Florida Department of Veterans' Affairs pursuant to s. 295.17.

(2) Beginning with the 2022-2023 academic year, a disabled veteran enrolled in a program of education approved for educational assistance under 38 U.S.C. s. 3313, at a state university, a Florida College System institution, a career center operated by a school district under s. 1001.44, or a charter technical career center who does not qualify for the 100 percent eligibility tier under federal law is eligible to receive a waiver for tuition and fees. The waiver amount is equal to the difference between the portion of tuition and fees paid in accordance with federal law and the full amount of tuition and fees at the institution attended. The amount awarded by the state is not to be determined until after the application of federal benefits under 38 U.S.C. s. 3313.

(a) Each state university, Florida College System institution, career center operated by a school district under s. 1001.44, and charter technical career center shall report to the Board of Governors and the State Board of Education, respectively, the number and value of all fee waivers granted annually under this subsection.

(b) The Board of Governors and the State Board of Education shall respectively adopt regulations and rules to administer this subsection.

(3) Sections 295.03, 295.04, 295.05, and 1009.40 apply to any disabled veteran who receives an award under this section.

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

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 Appropriations

BILL:	CS/CS/SB 988
INTRODUCER:	Appropriations Committee; Health Policy Committee; and Senator Garcia and others
SUBJECT:	Patient Visitation Rights
DATE:	March 2, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	**Fav/CS**
2.	McKnight	Money	AHS	**Recommend: Favorable**
3.	McKnight	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 988 establishes the "No Patient Left Alone Act" (Act), creating sections 408.823 and 408.8235, Florida Statutes. Specifically, the bill:

- Requires long-term care providers[1], hospitals, and hospice facilities to develop and establish visitation policies and procedures, make them easily accessible from the home page of their websites within a specified time, and submit them to the Agency for Health Care Administration (AHCA) when applying for initial licensure, licensure renewal, or change of ownership, and make them available for review upon request at any time.
- Provides requirements for visitation policies and procedures.
- Authorizes long-term care providers to require visitors to sign and certify that they will follow the policies and procedures and to suspend in-person visitation of specific visitors, with exceptions, under certain circumstances.
- Requires the AHCA to dedicate a stand-alone page on its website to explain long-term care provider visitation rights authorized under this Act and provide a portal and phone number for individuals to report violations.
- Clarifies the Act prevails over any conflicting or inconsistent provisions of state law.

[1] A "long-term care provider" is defined as an intermediate care facility for the developmentally disabled licensed and certified under part VIII of chapter 400, a developmental disabilities center as defined in s. 393.063, F.S., a nursing home facility licensed under part II of chapter 400, or an assisted living facility licensed under part I of chapter 429.

The bill has no fiscal impact on state revenues or state expenditures.[2]

The bill takes effect upon becoming a law.

II. Present Situation:

General Timeline of the Emergence of the COVID-19 Pandemic

The first signs of COVID-19 appeared in December of 2019 in the city of Wuhan, China, as a pneumonia virus of unknown origin. By early January, 2020, Chinese authorities identified a novel coronavirus as the cause of the outbreak. Shortly thereafter, the first cases of COVID-19—officially named by the World Health Organization (WHO) on February 11, 2020—were detected in Japan and Thailand. On January 20, 2020, the U.S. Centers for Disease Control and Prevention confirmed the first case of COVID-19 in the United States appearing in Washington State. On January 31, 2020, the U.S. Secretary of Health and Human Services (HHS) declared COVID-19 a public health emergency and on March 11, 2020, the WHO declared COVID-19 a pandemic.[3]

Ten days prior, on March 1, 2020, Florida Surgeon General Scott Rivkees declared a public health emergency.[4] The public health emergency was renewed multiple times and remained in effect until it was allowed to expire on June 26, 2021.[5] Under the authority granted to the Governor, the AHCA, and the Department of Health (DOH), as well as other executive agencies, numerous emergency measures were put in place to slow the spread of COVID-19 and to protect the public health, including restricting visitation in certain health care and long term care facilities.

Florida Visitation Restrictions during COVID-19

On March 15, 2020, the Florida Division of Emergency Management (DEM) issued emergency order (EO) 20-006 which required every facility, as defined in the EO, in Florida to prohibit the entry of any individual to the facility except in specified circumstances. For the purposes of the EO, the term "facility" included:

- Group Home Facilities;
- Developmental Disabilities Centers;
- Nursing Homes;
- Homes for Special Services;
- Long-Term Care Hospitals;
- Transitional Living Facilities;

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[2] Agency for Health Care Administration, *Fiscal Impact Statement for SB 988*, Feb. 25, 2022 (on file with the Senate Appropriations Subcommittee on Health and Human Services).

[3] See COVID-19 Timeline, *David J. Spencer CDC Museum: In Association With the Smithsonian Institution, last reviewed Jan. 5, 2022, available at* https://www.cdc.gov/museum/timeline/covid19.html (last visited Jan. 7, 2022).

[4] See Florida Department of Health Declaration of Public Health Emergency, March 1, 2020, *available at* https://floridahealthcovid19.gov/wp-content/uploads/2020/03/declaration-of-public-health-emergency-covid-19-3.1.20.pdf, (last visited Jan. 10, 2022).

[5] The final renewal was issued on June 18, 2021, see Florida Department of Health Emergency Order (Extension), *available at* https://floridahealthcovid19.gov/wp-content/uploads/2021/06/Filed-PHE-Extension-June-18-2021.pdf, (last visited, Jan. 10, 2022).

- Intermediate Care Facilities for the Developmentally Disabled;
- Assisted Living Facilities (ALF);
- Adult Mental Health and Treatment Facilities;
- Adult Forensic Facilities;
- Civil Facilities; and
- Adult Family-Care Homes.

The EO provided exceptions for allowing entry in the following circumstances:
- Family members, friends, and visiting residents in end-of-life situations;
- Hospice or palliative care workers caring for residents in end-of-life situations;
- Any individuals providing necessary health care to a resident;
- Facility staff;
- Facility residents;
- Attorneys of record for a resident in an Adult Mental Health and Treatment Facility for court matters, if virtual or telephonic means were unavailable; and
- Representatives of the federal or state governments seeking entry as part of their official duties.

The EO also specified that the allowed individuals would remain prohibited from entering if:
- They were infected with COVID-19 and had not had two consecutive negative tests separated by 24 hours;
- They were showing signs or symptoms of respiratory infection;
- They had been in contact with a person known to be infected with COVID-19 in the past 14 days and had not tested negative for COVID-19;
- They had traveled through any airport in the previous 14 days; or
- They had traveled on a cruise ship in the previous 14 days.

The order was extended by EO 20-007 on May 18, 2020. On September 1, 2020, the DEM issued EO 20-009 which extended and modified the provisions of the previous two EOs by allowing essential caregivers and compassionate care visitors under specified circumstances, and on October 22, 2020, the DEM issued EO 20-011, which extended and modified the previous EOs by adding general visitors under specified circumstances. Finally, on March 22, 2021, the DEM issued EO 21-001, which rescinded the previous EOs prohibiting visitation and instead required all affected facilities to maintain visitation and infection control policies in accordance with all state and federal laws.

Current Status of Visitation in Florida

The availability and accessibility of visitation in Florida's health care facilities varies widely between facility type and from facility to facility, depending on each facility's visitation policies.

Certain types of facilities, such as nursing homes[6] and hospitals,[7] must adhere to federal guidelines for visitation, while other types, such as ALFs, are not federally regulated and operate solely under a license issued by the state.

Many factors affect how a facility may go about allowing or restricting visitation. At a minimum, a facility must follow the applicable laws and rules that govern its license type and, generally, a facility may exceed those minimum standards. However, when it comes to allowing or disallowing visitation, it is possible for a facility to become too restrictive. For example, the HHS Office for Civil Rights has investigated complaints stemming from hospitals in Connecticut and Massachusetts where disabled patients were denied the right to bring a caretaker with them into the hospital.[8] Overall, visitation policies will likely vary from facility to facility, and each facility will likely approach creating its visitation policies differently depending on what type of facility it is, the type of patients or residents the facility has, the laws and rules that affect that type of facility, the mindset of the individuals who create the policies for the facility, and many other factors.

III. Effect of Proposed Changes:

Section 1 establishes the bill as the "No Patient Left Alone Act" (Act).

Section 2 creates s. 408.823, F.S., to:

- Define "long-term care provider" as an intermediate care facility for the developmentally disabled licensed and certified under part VIII of chapter 400, a developmental disabilities center as defined in s. 393.063, a nursing home facility licensed under part II of chapter 400, or an assisted living facility licensed under part I of chapter 429.
- Require each long-term care provider, no later than 30 days after the effective date of this Act, to develop and establish visitation policies and procedures that, at a minimum, include:
  - Infection control and education policies for visitors;
  - Screening, personal protective equipment, and other infection control recommendations for visitors;
  - Recommendations on the length of visits or number of visitors allowed which must meet or exceed the standards specified in ss. 400.022(1)(b) and 429.28(1)(d); and
  - Designation of a person who is responsible for ongoing assurance that staff adhere to the policies and procedures.

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[6] Federal guidelines for nursing homes require that all facilities must allow indoor visitation and, although there is no limit on the number of visitors a resident can have, all visits should be conducted in a manner that adheres to core principles of COVID-19 infection prevention. See Centers for Medicare and Medicaid Services, *Nursing Home Visitation – COVID-19 (revised), first published Sep. 17, 2020, last revised Dec. 11, 2021, available at* https://www.cms.gov/files/document/qso-20-39-nh-revised.pdf (last visited Jan. 10, 2022).

[7] Under the federal government's phased approach to reopening (see https://trumpwhitehouse.archives.gov/openingamerica/, last visited Jan. 10, 2022), unrestricted hospital visitation has been available since entering phase 3. Additionally, except for Long-Term Care Hospitals, Florida has not restricted visitation in hospitals. Currently, although visitation is not restricted, many hospitals are using enhanced visitation protocols due to the recent spike in COVID-19 cases caused by the Omicron variant. See: Hospital visitation policies tightened in South Florida as COVID omicron variant spreads, South Florida Sun Sentinel, Mary Lou Cruz, Jan. 5, 2022, *available at* https://www.sun-sentinel.com/coronavirus/fl-ne-coronavirus-hospital-rules-20210724-omq3lxv6pvbufedbvkgckn6a4u-story.html (last visited Jan. 10, 2022)

[8] Hospital Visitor Bans Under Scrutiny After Disability Groups Raise Concerns Over Care, Joseph Shapiro, May 17, 2020, *available at* https://www.npr.org/2020/05/17/857531789/federal-government-asked-to-tell-hospitals-modify-visit-bans, (last visited Jan. 10, 2022).

- Specify that policies and procedures may not be more stringent than safety protocols established for the provider's staff and may not require visitors to submit proof of any vaccination or immunization. They must also allow visitors to physically touch the resident or client, unless the resident or client objects.
- Authorize long-term care providers to require visitors to sign and certify that the visitors agree to follow visitation policies and procedures.
- Require long-term care providers to submit their visitation policies and procedures to the Agency for Health Care Administration (AHCA) when applying for initial licensure, licensure renewal, or change of ownership, and make them available for review upon request at any time.
- Authorize a long-term care provider to suspend in-person visits if the visitor violates policies and procedures. A long-term care provider's policies and procedures must allow for in-person visitation in all of the following circumstances, regardless of a suspension of visitation rights based on violations of the provider's infection control policies and procedures, unless the resident or client objects:
  - End-of-life situations.
  - A resident or client who was living with his or her family before recently being admitted to the provider's care and is struggling with the change in environment and lack of in-person family support.
  - Making major medical decisions regarding the resident or client.
  - A resident or client is grieving the loss of a friend or family member who recently died.
  - A resident or client needs cueing or encouragement to eat or drink which a family member or caregiver previously provided.
  - A resident or client who used to talk and interact with others and is experiencing emotional distress, seldom speaking, or crying more frequently than he or she did previously.
- Require long-term care providers, within 24 hours after establishing policies and procedures, to make this information easily accessible from the homepage of their websites.
- Require the AHCA to dedicate a stand-alone page on its website to explain long-term care provider visitation rights authorized under this Act and to provide a portal and phone number for individuals to report violations.
- Clarify this section prevails over any conflicting or inconsistent provisions of state law.

Section 3 creates s. 408.8235, F.S., to:

- Require each hospital licensed under chapter 395, and hospice facility licensed under part IV of chapter 400, no later than 30 days after the effective date of this Act, to develop and establish visitation policies and procedures that, at a minimum, include:
  - Infection control and education policies for visitors;
  - Screening, personal protective equipment, and other infection control recommendations for visitors;
  - Recommendations on the length of visits or number of visitors; and
  - Designation of a person in the hospital or hospice facility who is responsible for ongoing assurance that staff adhere to the policies and procedures.
- Specify that policies and procedures may not require visitors to submit proof of any vaccination or immunization and must allow visitors to physically touch the patient, unless the patient objects.

- Require visitation policies and procedures to allow for in-person visitation in all of the following circumstances, unless the patient objects:
  - End-of-life situations.
  - For hospitals, childbirth, including labor and delivery. The policies and procedures must allow visitation for at least one companion.
  - Making major medical decisions regarding the patient.
  - Pediatric patients.
- Require hospitals and hospice facilities to submit their visitation policies and procedures to the AHCA when applying for initial licensure, licensure renewal, or change of ownership, and make them available for review upon request at any time; and within 24 hours after establishing policies and procedures, make this information easily accessible from the homepage of their websites.
- Clarify this section prevails over any conflicting or inconsistent provisions of state law.

Sections 4 directs the Division of Law Revision to replace the phrase "30 days after the effective date of this act" wherever it occurs in this Act with the date 30 days after this Act becomes a law.

Section 5 provides the Act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/CS/SB 988 may have an indeterminate fiscal impact on long-term care providers, hospitals, and hospice facilities that are required to establish new visitation policies and procedures.

C. Government Sector Impact:

The bill has no fiscal impact on state revenues or state expenditures.[9]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 408.823 and 408.8235.

IX. Additional Information:

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

CS/CS by Appropriations on February 28, 2022:
The committee substitute:

- Establishes requirements for visitation policies and procedures and revises requirements for visitation protocols.
- Removes the approval of visitation policies by the Agency for Health Care Administration (AHCA) and the requirements for the AHCA to investigate a report of a violation, impose fines for violations, and adopt rules.
- Clarifies the bill applies to long-term care providers, including ICF/DDs, developmental disability centers, nursing home facilities, and assisted living facilities, as well as hospitals and hospice facilities.
- Requires long-term care providers, hospitals, and hospice facilities to develop visitation policies and procedures and make them easily accessible from the home page of their respective websites, as well as to submit them to the AHCA when applying for initial licensure, licensure renewal, or change of ownership, and make them available for review upon request at any time.
- Authorizes long-term care providers to require visitors to sign and certify that they will follow the policies and procedures and suspend in-person visitation of specific visitors, with exceptions, under certain circumstances.

[9] Agency for Health Care Administration, *Fiscal Impact Statement for SB 988*, Feb. 25, 2022 (on file with the Senate Appropriations Subcommittee on Health and Human Services).

- Requires the AHCA to dedicate a stand-alone page on its website to explain the long-term care provider visitation rights authorized under this Act and to provide a portal and phone number for individuals to report violations.
- Clarifies the Act prevails over any conflicting or inconsistent provisions of state law.
- Directs the Division of Law Revision to replace the phrase "30 days after the effective date of this act" wherever it occurs with the date 30 days after the bill becomes a law.
- Changes the effective date from July 1, 2022, to upon becoming a law.

CS by Health Policy on January 13, 2022:
The CS clarifies that only providers that admit clients to their facilities or that serve clients as residents in their facilities are required to allow visitation.

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	.	
03/02/2022	.	
	.	
	.	
	.	

The Committee on Appropriations (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. This act may be cited as the "No Patient Left Alone Act."

Section 2. Section 408.823, Florida Statutes, is created to read:

408.823 Long-term care visitation rights.—

(1) As used in this section, the term "long-term care

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provider" means an intermediate care facility for the developmentally disabled which is licensed and certified under part VIII of chapter 400, a developmental disabilities center as defined in s. 393.063, a nursing home facility licensed under part II of chapter 400, or an assisted living facility licensed under part I of chapter 429.

(2)(a) No later than 30 days after the effective date of this act, each long-term care provider shall develop and establish visitation policies and procedures. The policies and procedures must, at a minimum, include infection control and education policies for visitors; screening, personal protective equipment, and other infection control recommendations for visitors; recommendations on the length of visits or number of visitors allowed which must meet or exceed the standards specified in ss. 400.022(1)(b) and 429.28(1)(d); and designation of a person who is responsible for ongoing assurance that staff adhere to the policies and procedures. The policies and procedures may not be more stringent than safety protocols established for the provider's staff and may not require visitors to submit proof of any vaccination or immunization. The policies and procedures must allow visitors to physically touch the resident or client, unless the resident or client objects.

(b) The policies and procedures may require visitors to sign and certify that the visitors agree to follow the long-term care provider's policies and procedures.

(c) Long-term care providers shall submit their visitation policies and procedures to the agency when applying for initial licensure, licensure renewal, or change of ownership. The provider must make the visitation policies and procedures

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available for review upon agency request at any time.

(d) A long-term care provider may suspend in-person visits of a specific visitor if the visitor violates the provider's policies and procedures. However, a long-term care provider's policies and procedures must allow for in-person visitation in all of the following circumstances, regardless of a suspension of visitation rights based on violations of the provider's infection control policies and procedures, unless the resident or client objects:

1. End-of-life situations.

2. A resident or client who was living with his or her family before being admitted to the provider's care is struggling with the change in environment and lack of in-person family support.

3. Making major medical decisions regarding the resident or client.

4. A resident or client is grieving the loss of a friend or family member who recently died.

5. A resident or client needs cueing or encouragement to eat or drink which was previously provided by a family member or caregiver.

6. A resident or client who used to talk and interact with others is experiencing emotional distress, seldom speaking, or crying more frequently than he or she did previously.

(e) Within 24 hours after establishing the policies and procedures under this section, long-term care providers must make this information easily accessible from the homepage of their websites.

(3) The agency shall dedicate a stand-alone page on its

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website to explain visitation rights authorized under this section and s. 408.8235 and to provide a portal and phone number for individuals to report violations.

(4) This section prevails over any conflicting or inconsistent provisions of state law.

Section 3. Section 408.8235, Florida Statutes, is created to read:

408.8235 Hospital and hospice visitation rights.—

(1)(a) No later than 30 days after the effective date of this act, each hospital licensed under chapter 395 and hospice facility licensed under part IV of chapter 400 shall develop and establish visitation policies and procedures. The policies and procedures must, at a minimum, include infection control and education policies for visitors; screening, personal protective equipment, and other infection control recommendations for visitors; recommendations on the length of visits or number of visitors; and designation of the person in the hospital or hospice facility who is responsible for ongoing assurance that staff adhere to the policies and procedures. The visitation policies and procedures may not require visitors to submit proof of any vaccination or immunization and must allow visitors to physically touch the patient, unless the patient objects.

(b) The visitation policies and procedures required by this section must allow for in-person visitation in all of the following circumstances, unless the patient objects:

1. End-of-life situations.

2. For hospitals, childbirth, including labor and delivery. The policies and procedures must allow visitation for at least one companion during this circumstance.

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3. Making major medical decisions regarding the patient.

4. Pediatric patients.

(c) Hospitals and hospice facilities shall submit their visitation policies and procedures to the agency when applying for initial licensure, licensure renewal, or change of ownership. The hospital or hospice facility must make the visitation policies and procedures available for review upon agency request at any time.

(d) Within 24 hours after establishing the policies and procedures under this section, hospitals and hospice facilities must make this information easily accessible from the homepage of their websites.

(2) This section prevails over any conflicting or inconsistent provisions of state law.

Section 4. The Division of Law Revision is directed to replace the phrase "30 days after the effective date of this act" wherever it occurs in this act with the date 30 days after this act becomes a law.

Section 5. This act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to in-person visitation; providing a short title; creating s. 408.823, F.S.; defining the term "long-term care provider"; requiring long-term care providers to develop and establish visitation



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policies and procedures within a specified timeframe; providing requirements for the visitation policies and procedures; authorizing long-term care providers to require visitors to sign and certify that they will follow the providers' policies and procedures; requiring long-term care providers to submit their policies and procedures to the Agency for Health Care Administration at specified times; requiring long-term care providers to make their policies and procedures available to the agency upon request at all times; authorizing long-term care providers to suspend in-person visitation of specific visitors under certain circumstances, with exceptions; requiring long-term care providers to make their visitation policies and procedures easily accessible from the homepage of their websites within a specified timeframe; requiring the agency to dedicate a stand-alone page on its website for specified purposes; providing construction; creating s. 408.8235, F.S.; requiring hospitals and hospice facilities to develop and establish visitation policies and procedures within a specified timeframe; providing requirements for the visitation policies and procedures; requiring hospitals and hospice facilities to submit their policies and procedures to the agency at specified times; requiring hospitals and hospice facilities to make their policies and procedures available to the agency upon request at all times; requiring hospitals and hospice facilities to make their visitation


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policies and procedures easily accessible from the homepage of their websites within a specified timeframe; providing construction; providing a directive to the Division of Law Revision; providing an effective date.

By the Committee on Health Policy; and Senators Garcia, Berman, Rodriguez, and Perry

588-01989-22 2022988c1

A bill to be entitled

An act relating to patient visitation rights; providing a short title; creating s. 408.823, F.S.; requiring providers to allow clients to receive visitors during their admission or residency at the facility; requiring providers to develop certain alternative visitation protocols if providers have to restrict public access to their facilities for health or safety concerns; requiring providers to allow in-person visits in specified circumstances; authorizing providers to require visitors to adhere to specified infection control protocols; authorizing providers to refuse visitation to a visitor who does not pass a health screening or refuses to comply with the provider's infection control protocols; requiring providers to submit their visitation policies to the Agency for Health Care Administration by a specified date for approval; requiring providers to submit updated policies within a specified timeframe under certain circumstances; requiring providers to notify clients and, if possible, their family members or caregivers of their visitation rights and provide them with specified information; requiring the agency to dedicate a webpage on its website containing specified information; requiring the agency to investigate a report of a violation within a specified timeframe; providing administrative penalties; requiring the agency to adopt rules; providing an effective date.

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

588-01989-22 2022988c1

WHEREAS, the COVID-19 pandemic has caused great uncertainty and anxiety across this state and has significantly affected patients and residents in health care facilities, and

WHEREAS, health care facilities have made great efforts to keep patients and employees in a safe environment and have attempted to minimize, to the extent possible, the risk of spread of COVID-19, and

WHEREAS, these prevention measures have had many unintended consequences for patients and residents of these facilities who were not diagnosed with COVID-19, and

WHEREAS, patients and residents of health care facilities who were not diagnosed with COVID-19 were prohibited from having any visitors, including a spouse, parent, close family member, guardian, health care agent, or caregiver, as a result of COVID-19 prevention measures, and

WHEREAS, many families have been unable to be physically present with their loved ones while they were in a hospital, long-term care facility, or residential treatment setting for mental illnesses, developmental or intellectual disabilities, or substance use disorders, and have been limited to electronic video communications, if any, and

WHEREAS, the patients and residents affected by these restrictions include adults, minors, and individuals with intellectual or developmental disabilities, and

WHEREAS, the Legislature finds that it is in the best interest of the state and its residents that the patients and residents of health care facilities be allowed visitation by visitors of their choosing during their hospitalization or residential treatment, NOW, THEREFORE,

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

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

Section 1. This act may be cited as the "No Patient Left Alone Act."

Section 2. Section 408.823, Florida Statutes, is created to read:

408.823 Client visitation rights.—

(1) A provider shall allow clients to receive visitors during their admission to, or residency at, the provider's facility in accordance with agency rules.

(2) If circumstances require a provider to restrict public access to the facility due to health or safety concerns, the provider must develop alternate visitation protocols that allow visitation to the greatest extent possible while maintaining client health and safety.

(3) A provider that admits clients to its facility or serves clients who are residents in the provider's facility must allow in-person visits in all of the following circumstances:

(a) End-of-life situations.

(b) A client who was living with his or her family before recently being admitted to the provider's facility is struggling with the change in environment and lack of physical family support.

(c) A client is grieving the loss of a friend or family member who recently died.

(d) A client needs cueing or encouragement to eat or drink which was previously provided by a family member or caregiver, and the client is experiencing weight loss or dehydration.

(e) A client who used to talk and interact with others is experiencing emotional distress, is seldom speaking, or is crying more frequently than he or she did previously.

(f) Any other circumstance the agency deems appropriate.

(4) To ensure the health and safety of clients, a provider may require visitors to adhere to infection control protocols, including passing a health screening and wearing personal protective equipment while on the premises of the provider's facility. A provider may refuse visitation if the visitor does not pass a health screening or refuses to comply with the provider's infection control protocols.

(5) Providers shall submit their visitation policies to the agency by January 1 each year for approval. If the agency finds any provision of a provider's visitation policy deficient or not in compliance with this section or the agency's rules, the provider must submit an updated policy conforming such provision within 30 days after the agency's notice.

(6) Providers must notify clients and, if possible, their family members or caregivers of their visitation rights under this section and provide them with the contact information for the agency and the link to the dedicated webpage on the agency's website specified in subsection (7).

(7) The agency must dedicate a webpage on its website to explain visitation rights authorized under this section and provide a method for individuals to report violations of this section to the agency. The agency shall investigate a report of a violation within 30 days after receiving the report.

(8) A violation of this section or the rules adopted pursuant hereto constitutes a class III violation as specified

in s. 408.813. If a provider does not correct a violation in the time specified by the agency or repeats a violation, the agency must impose an administrative fine of at least $500 per violation. Each occurrence and each day that the violation continues constitutes a separate violation.

(9) The agency shall adopt rules to implement this section.

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 Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 3, 2022

I respectfully request that **Senate Bill 988**, relating to Patient Visitation Rights, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Ileana Garcia
Florida Senate, District 37

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

2/28
Meeting Date

Appropriations
Committee

SB 988
Bill Number or Topic

Amendment Barcode (if applicable)

Name Cody Farril

Phone

Address 2727 Mahan Dr.
Street

Email

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:
AHCA

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

2-28-22
Meeting Date

Appropriations
Committee

988
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jason Hand

Phone 850-443-0024

Address 2292 Wednesday Street, Suite 1
Street

Email jhand@floridaseniorliving.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 Senior Living 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.

The Florida Senate

APPEARANCE RECORD

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

2-28-22
Meeting Date

Appropriations
Committee

988
Bill Number or Topic

799882
Amendment Barcode (if applicable)

Name Jason Hand

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida Senior Living 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 Appropriations

BILL:	CS/CS/SB 1010
INTRODUCER:	Appropriations Committee; Health Policy Committee; and Senator Gibson
SUBJECT:	Uterine Fibroid Research and Education
DATE:	March 1, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	**Fav/CS**
2.	Howard	Money	AHS	**Recommend: Favorable**
3.	Howard	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1010 requires the Department of Health (department) to develop and maintain an electronic database of information related to uterine fibroids. The bill requires specified health care providers to submit to the department information on the diagnosis or treatment of women with uterine fibroids for inclusion in the database. The bill defines health care providers as physicians or physician assistants licensed under chapters 458 or 459, Florida Statutes, and advanced practice registered nurses licensed under chapter 464, Florida Statutes.

The bill prohibits the database from including personal identifying information. The bill requires the department to develop and include information related to uterine fibroids in its women's health care educational materials currently made available to the public. The information must include possible risk factors for developing uterine fibroids and the range of available treatment options that are considered alternatives to a hysterectomy.

The bill provides an appropriation for the 2022-2023 fiscal year, including $121,852 in recurring funds and $681,048 in nonrecurring funds from the General Revenue Fund to the department and one full-time equivalent position with associated salary rate of 55,212.

The department estimates a fiscal impact of $1.4 million to procure, develop, and implement the required database, as well as training health care providers on the bill's new reporting requirement. See section V of this analysis.

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

II. Present Situation:

The Department of Health

The Legislature created the department to protect and promote the health of all residents and visitors in the state.[1] The department is charged with the regulation of health care practitioners for the preservation of the health, safety, and welfare of the public. The Public Health Research Unit is located within the Division of Community Health Promotion within the department.[2]

Public Health Research

In 1999, the Legislature established the Lawton Chiles Endowment Fund and the Florida Biomedical Research Program to support research initiatives that address the health care problems of Floridians in the areas of cancer, cardiovascular disease, stroke, and pulmonary disease.[3] The Biomedical Research Program, within the division of Public Health Research in the department, administers annual funding opportunities for research grant applications, monitors research grants, evaluates progress of research grant project aims, and provides research consultations and technical assistance. Annual reports are submitted to the Florida Legislature on research progress. The goals of the research grants are to find new discoveries leading to the prevention, treatment, and cures for cancer, tobacco-related diseases, and Alzheimer's disease.

This program is also responsible for the department Institutional Review Board (IRB) and the Human Research Protection Program, which provides research consultations and technical assistance concerning applications for research reviewed by the IRB. The IRB reviews research projects that involve clients, data, facilities, and staff.

The Biomedical Research Program also provides two educational programs to enrich the department's internal research capacity: the Research Excellence Initiative and Florida Health Grand Rounds.

The Research Excellence Initiative is a year-long education program for the department professionals conducting research, epidemiology, and program evaluation. The initiative builds skills and ability for quality and innovative research with emphasis on research integrity, research ethics, and regulatory requirements. The Research Excellence Initiative is now in its fourth year.[4]

The Florida Health Grand Rounds is a webinar series held in the fall and spring semesters in partnership with Florida university-based researchers and hosted by the department. The topics

[1] Section 20.43, F.S.
[2] *Id.*
[3] Chapter 99-167, s. 2, Laws of Fla.
[4] Department of Health, Provider and Partner Resources, Research, *Research Excellence Initiative*, available at http://www.floridahealth.gov/provider-and-partner-resources/research/academy-of-research-excellence.html (last visited Jan. 25, 2022).

have a broad focus, touching on emerging, innovative, and cross-cutting areas of public health. Florida Health Grand Rounds provides an opportunity for Florida researchers to highlight and share their work with the department staff.[5]

Biomedical Research Program

The Florida Legislature has long recognized the need to support vital research conducted in both academic and private institutions throughout the state through the William G. "Bill" Bankhead Jr. and David Coley Cancer Research Program (Bankhead-Coley Program); the James and Esther King Biomedical Research Program (King Program); and the Live Like Bella Pediatric Cancer Research Initiative (Bella Initiative), the latter of which is funded through the Bankhead-Coley Program, is now in its fifth year, and is the only state-funded pediatric cancer research program in the U.S.[6]

Total funding, in the amount of $18,505,007, was awarded to Bankhead-Coley and King Program and Bella Initiative grantees. This funding, during Fiscal Year 2020-2021, resulted in 13 Bankhead-Coley, 12 King, and 11 Bella Initiative new research grants. These awards are made to universities and cancer research centers across the state to support researchers for improving prevention, diagnosis, and treatment.[7]

Research grants are awarded through a competitive peer review process. Awards are based on scientific merit as determined via independent peer review by experts located outside Florida who are free from conflicts of interest. Full-time researchers at any Florida-based university or established research institution are eligible to apply. All researchers provide a legislative report that is used to produce an annual report.[8]

Uterine Fibroids

Uterine fibroid lesions were initially known as the "uterine stone." The term "fibroid" was first introduced in the 1860s. Uterine fibroids are the most common pelvic tumors among women of reproductive age, affecting more than 70 percent of women worldwide, particularly women of color.

Although benign, uterine fibroids are associated with significant morbidity; they are the primary indication for hysterectomy and a major source of gynecologic and reproductive dysfunction,

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[5]. Department of Health, Provider and Partner Resources, Research, *Florida Health Grand Rounds*, available at http://www.floridahealth.gov/provider-and-partner-resources/research/florida-health-grand-rounds/index.html (last visited Jan. 25, 2022).

[6] Department of Health, Biomedical Research Advisory Council Report, *William G. "Bill" Bankhead Jr., and David Coley Cancer Research Program, James and Esther King Biomedical Research Program , and Live Like Bella Pediatric Cancer Research Initiative, 2020-2021, p. 2.*, available at http://www.floridahealth.gov/provider-and-partner-resources/research/research-programs1/2021BiomedicalResearchAdvisoryCouncilAnnualReport.pdf (last visited Jan. 25, 2022).

[7] *Id.*

[8] *Supra* note 6.

ranging from menorrhagia[9] and pelvic pain to infertility, recurrent miscarriage, and preterm labor. The annual U.S. health care costs associated with uterine fibroids have been estimated at approximately $34 billion. Uterine fibroids thus represent significant societal health and financial burdens on the U.S. health care system and economy.[10]

Diagnosis and Treatment

The growth of fibroids that originate from the uterine's smooth muscle tissue (myometrium) is dependent on estrogen and progesterone. Fibroids are rare before puberty, increase in prevalence during the reproductive years, and decrease in size after menopause. Uterine fibroids are classified based on location: subserosal (projecting outside the uterus), intramural (within the myometrium), and submucosal (projecting into the uterine cavity).

The symptoms and treatment options for fibroids are affected by size, number, and location. The most common symptom is abnormal uterine bleeding, usually manifesting as excessive menstrual bleeding. Other symptoms include pelvic pressure, bowel dysfunction, urinary frequency and urgency, urinary retention, low back pain, constipation, and painful intercourse.

Treatment of uterine fibroids should be tailored to the size and location of the tumors; the patient's age, symptoms, desire to maintain fertility, and access to treatment; and the physician's experience. The ideal treatment satisfies four goals: relief of signs and symptoms, sustained reduction of the size of fibroids, maintenance of fertility (if desired), and avoidance of harm.[11]

III. Effect of Proposed Changes:

The bill creates s. 381.9312, F.S., which requires the department to develop and maintain an electronic database of information related to uterine fibroids. The purpose of the database is to encourage research relating to the diagnosis and treatment of uterine fibroids and ensure that women are provided with the relevant information and health care necessary to prevent and treat uterine fibroids.

The bill defines "health care provider" to include physicians or physician assistants licensed under chs. 458 or 459, F.S., or an advanced practice registered nurse registered under chapter 464, F.S.; and a "uterine fibroid" as a noncancerous growth of the uterus that often appears during a woman's childbearing years.

The database must include, but need not be limited to, all of the following information:

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[9] Menorrhagia is heavy or prolonged menstrual bleeding. John Hopkins Medicine, Health, Menorrhagia, *What is menorrhagia?* available at https://www.hopkinsmedicine.org/health/conditions-and-diseases/menorrhagia (last visited Jan. 27, 2022).

[10] Yang Q, Ciebiera M, Bariani M, Ali M, Elkafas H, Boyer T, and Al-Hendy A, Endocrine Society Oxford, Endocrine Reviews, 2022, Vol. XX, No. XX, 1–43 *Comprehensive Review of Uterine Fibroids: Developmental Origin, Pathogenesis, and Treatment*, (Nov. 2021) available at https://academic.oup.com/edrv/advance-article/doi/10.1210/endrev/bnab039/6422392 (last visited Jan. 27, 2022).

[11] Maria Syl D. De La Cruz, MD, & Edward M. Buchanan, MD, Sidney Kimmel Medical College, Thomas Jefferson University, Philadelphia, Pa., published by American Family Physician, Vol. 95, No.2, (Jan. 15, 2017) *Uterine Fibroids: Diagnosis and Treatment*, available at https://www.aafp.org/afp/2017/0115/afp20170115p100.pdf (last visited Jan. 27, 2022).

- Incidence and prevalence of women diagnosed with uterine fibroids in Florida;
- Demographic attributes of women diagnosed with uterine fibroids in Florida; and
- Treatments and procedures for uterine fibroids used by health care providers in Florida.

A health care provider who diagnoses or treats a woman with uterine fibroids must submit information relating to such diagnosis or treatment to the department in a form and manner prescribed by the department rule for inclusion in the database. Such information may be submitted along with any reports or other information that the health care provider is required to submit to the department pursuant to state law.

The database may not include any personal identifying information of women diagnosed with or treated for uterine fibroids.

The department must develop and include information related to uterine fibroids in its women's health care educational materials currently made available to the public. The information must include, but need not be limited to:
- The possible risk factors of developing uterine fibroids; and
- The range of available treatment options that are considered alternatives to a hysterectomy.

For the 2022-2023 fiscal year, the sums of $121,852 in recurring funds and $681,048 in nonrecurring funds from the General Revenue Fund are appropriated to the department and one full-time equivalent position with associated salary rate of 55,212 is authorized for the purpose of implementing this act.

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:

CS/CS/SB 1010 may have an impact on private health care practitioners due to the potential need for additional staff time, record keeping, and reporting of required information on patients with uterine fibroids they diagnose and treat.

C. Government Sector Impact:

The Department of Health (department) estimates a fiscal impact of $1,426,688, including $1,210,149 in nonrecurring funds and $216,539 in recurring funding, to procure, develop, and implement the required database, as well as training health care providers on the bill's new reporting requirement. This funding includes three data-entry staff and one epidemiologist in the "other personal services" category.[12]

For the 2022-2023 fiscal year, the sums of $121,852 in recurring funds and $681,048 in nonrecurring funds from the General Revenue Fund are appropriated to the department and one full-time equivalent position with associated salary rate of 55,212 is authorized for the purpose of implementing this act.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 381.9312 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on February 28, 2022:
The committee substitute:

- Provides an appropriation for the 2022-2023 fiscal year, including $121,852 in recurring funds and $681,048 in nonrecurring funds from the General Revenue Fund

[12] E-mail from the Department of Health to the Senate Health Policy Committee (Jan. 24, 2022) (on file with Senate Health Policy Committee).

to the department and one full-time equivalent position with associated salary rate of 55,212.
- Modifies the definition of health care providers to include physician assistants licensed under chs. 458 or 459, F.S., or advanced practice registered nurses registered under chapter 464, F.S

CS by Health Policy on February 2, 2022:
The CS:
- Revises the bill's definition of "health care provider" to include allopathic and osteopathic physicians, as opposed to only allopathic physicians as in the underlying bill;
- Clarifies that AAPRNs referenced in the definition are autonomous AAPRNs;
- Deletes the FMA's participation in the department's development and dissemination of information to health care providers and in the bill's public awareness campaign; and
- Revises the risk factors for which the department must develop information related to fibroids in women's health care.

B. Amendments:

None.

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

920488

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2022	.	
	.	
	.	
	.	

The Committee on Appropriations (Gibson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 28 - 69
and insert:
(b) "Health care provider" means a physician or physician assistant licensed under chapter 458 or chapter 459 or an advanced practice registered nurse registered under chapter 464.
(c) "Uterine fibroid" means a noncancerous growth of the uterus that often appears during a woman's childbearing years.
(2) UTERINE FIBROID RESEARCH DATABASE.—



(a) The department shall develop and maintain an electronic database consisting of information related to uterine fibroids. The purpose of the database is to encourage research relating to the diagnosis and treatment of uterine fibroids and to ensure that women are provided with the relevant information and health care necessary to prevent and treat uterine fibroids. The database must include, but need not be limited to, all of the following information:

1. Incidence and prevalence of women diagnosed with uterine fibroids in this state.

2. Demographic attributes of women diagnosed with uterine fibroids in this state.

3. Treatments and procedures for uterine fibroids used by health care providers in this state.

(b) A health care provider who diagnoses or treats a woman with uterine fibroids shall submit information relating to such diagnosis or treatment to the department in a form and manner prescribed by department rule for inclusion in the database. Such information may be submitted along with any reports or other information that the health care provider is required to submit to the department pursuant to state law.

(c) The database may not include any personal identifying information of women diagnosed with or treated for uterine fibroids.

(3) UTERINE FIBROID EDUCATION OUTREACH AND PUBLIC AWARENESS.—The department shall develop and include information related to uterine fibroids in its women's health care educational materials currently made available to the public. The information must include, but need not be limited to, the

920488

following:

(a) Possible risk factors for developing uterine fibroids.

(b) Range of available treatment options that are considered alternatives to hysterectomy.

Section 2. For the 2022-2023 fiscal year, the sums of $121,852 in recurring funds and $681,048 in nonrecurring funds from the General Revenue Fund are appropriated to the Department of Health and one full-time equivalent position with associated salary rate of 55,212 is authorized for the purpose of implementing this act.

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

And the title is amended as follows:

Delete lines 12 - 18

and insert:

identifying information; requiring the department to develop and include information related to uterine fibroids in certain literature currently made available to the public for a specified purpose; providing an appropriation and authorizing a position; providing an effective date.

By the Committee on Health Policy; and Senator Gibson

588-02666-22 20221010c1

A bill to be entitled

An act relating to uterine fibroid research and education; creating s. 381.9312, F.S.; providing definitions; requiring the Department of Health to develop and maintain an electronic database of information related to uterine fibroids; providing a specified purpose for such database; requiring that the database include specified information; requiring health care providers to submit certain information to the department for inclusion in the database; prohibiting the database from including any personal identifying information; providing that such information is confidential; authorizing certain persons to use such information for a specified purpose; requiring the department to develop and include information related to fibroids in certain literature currently made available to the public for a specified purpose; providing an effective date.

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

Section 1. Section 381.9312, Florida Statutes, is created to read:

381.9312 Uterine fibroid research database; education and public awareness.—

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

(a) "Department" means the Department of Health.

(b) "Health care provider" means a physician licensed under chapter 458 or chapter 459 or an autonomous advanced practice

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

588-02666-22 20221010c1

registered nurse registered under s. 464.0123.

(c) "Uterine fibroid" means a noncancerous growth of the uterus that often appears during a woman's childbearing years.

(2) UTERINE FIBROID RESEARCH DATABASE.—

(a) The department shall develop and maintain an electronic database consisting of information related to uterine fibroids. The purpose of the database is to encourage research relating to the diagnosis and treatment of uterine fibroids and to ensure that women are provided with the relevant information and health care necessary to prevent and treat uterine fibroids. The database must include, but need not be limited to, all of the following information:

1. Incidence and prevalence of women diagnosed with uterine fibroids in this state.

2. Demographic attributes of women diagnosed with uterine fibroids in this state.

3. Treatments and procedures for uterine fibroids used by health care providers in this state.

(b) A health care provider who diagnoses or treats a woman with uterine fibroids shall submit information relating to such diagnosis or treatment to the department in a form and manner prescribed by department rule for inclusion in the database. Such information may be submitted along with any reports or other information that the health care provider is required to submit to the department pursuant to state law.

(c) The database may not include any personal identifying information of women diagnosed with or treated for uterine fibroids. Such information is confidential and may be used only by employees or agents of the department for the purpose of

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

conducting uterine fibroid research.

(3) UTERINE FIBROID EDUCATION OUTREACH AND PUBLIC AWARENESS.—The department shall develop and include information related to fibroids in literature on women's health care and other related health care which is currently made available to the public to increase public awareness of uterine fibroids. The information must include, but need not be limited to, the following:

(a) Possible risk factors for developing uterine fibroids.

(b) Range of available treatment options that are considered alternatives to hysterectomy.

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

SENATOR AUDREY GIBSON
6th District

COMMITTEES:
Judiciary, *Vice Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Military and Veterans Affairs, Space, and Domestic Security
Reapportionment
Rules

SELECT SUBCOMMITTEE:
Select Subcommittee on Legislative Reapportionment

JOINT COMMITTEE:
Joint Legislative Budget Commission

February 22, 2022

Senator Kelli Stargel, Chair
Appropriations
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Stargel: Kelli,

I respectfully request that SB 1010, relating to uterine fibroid research and education, be placed on the next committee agenda.

SB 1010, directs the Department of Health to develop and maintain an electronic database of information relating to occurrence and treatment modalities related to fibroids, as potential to non-surgical procedures. The bill passed unanimously in the first and second committees.

Thank you for your time and consideration.

Sincerely,

Audrey

Audrey Gibson
State Senator
District 6

101 East Union Street, Suite 104, Jacksonville, Florida 32202 (904) 359-2553
410 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

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

2/28/2022
Meeting Date

Appropriations
Committee

1010
Bill Number or Topic

Amendment 920488
Amendment Barcode (if applicable)

Name Corinne Mixon

Phone 850-681-6788

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Email Corinne@rutledge-ecenia.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 Academy of Physician Assistants

☐ 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

2/28/2022
Meeting Date

Appropriations
Committee

1010
Bill Number or Topic

Amendment Barcode (if applicable)

Name Corinne Mixon

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Tallahassee FL 32301
City *State* *Zip*

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

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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 Appropriations

BILL:	PCS/CS/SB 1040 (751752)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Children, Families, and Elder Affairs Committee; and Senator Brodeur
SUBJECT:	Special Persons Registry
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Fav/CS**
2.	Gerbrandt	Money	AHS	**Recommend: Fav/CS**
3.	Gerbrandt	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1040, known as the "Protect Our Loved Ones" Act, authorizes a local law enforcement agency to develop and maintain a database, known as the "Special Needs Registry", of persons who may have developmental, psychological, or other disabilities or conditions.

Parents and guardians may voluntarily enroll minors and incapacitated individuals in the registry. The registry may include:

- An enrollee's demographic and contact information, and information related to the enrollee's disability or condition;
- Contact information of persons who have enrolled individuals on the registry; and
- Certification of the disability or condition.

The bill provides notification requirements for enrollment onto the registry and a process for removing oneself from the registry.

The bill authorizes local law enforcement agencies to provide information from the registry to law enforcement officers to assist in performance of their official duties.

The bill does not have a fiscal impact on state government. The bill may have a negative yet indeterminate fiscal impact on those law enforcement agencies that choose to create and maintain a Special Needs Registry.
The bill takes effect January 1, 2023.

II. Present Situation:

Developmental Disabilities

Developmental disabilities[1] include autism, cerebral palsy, spina bifida, intellectual disabilities, Down syndrome, Prader-Willi syndrome, and Phelan-McDermid syndrome.[2]

Cerebral palsy[3] is a group of disabling symptoms of extended duration, which results from damage to the developing brain that may occur before, during, or after birth and that results in the loss or impairment of control over voluntary muscles.[4]

Spina bifida[5] is a birth defect in the vertebral column in which part of the spinal cord, which is normally protected within the vertebral column, is exposed. Spina bifida is caused by the failure of the neural tube to close during embryonic development. The neural tube is the embryonic structure that gives rise to the brain and spinal cord. People with spina bifida can have difficulty with bladder and bowel incontinence, cognitive (learning) problems, and limited mobility.[6]

Individuals suffering from intellectual disabilities have significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior, which manifests before the age of 18.[7] Such individuals have certain limitations in both mental functioning and in adaptive skills such as communicating, self-care, and social skills. These limitations will cause a person to learn and develop more slowly. People with intellectual disabilities may take longer to learn to speak, walk, and take care of their personal needs such as dressing or eating.[8]

Down syndrome is a genetic disorder caused when abnormal cell division results in extra genetic material from chromosome 21. This genetic disorder, also known as trisomy 21, varies in

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[1] Developmental disability is defined as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.
[2] Agency for Persons with Disabilities, *Long-Range Program Plan (2021)*, available at http://floridafiscalportal.state.fl.us/Document.aspx?ID=23172&DocType=PDF (last visited February 3, 2022) (hereinafter cited as "The Long-Range Plan").
[3] Section 393.063(6), F.S.
[4] *Id*.
[5] Spina bifida is defined in statute as a medical diagnosis of spina bifida cystica or myelomeningocele. Section 393.063(41), F.S.
[6] The Long-Range Plan, p. 79.
[7] Section 393.063(24), F.S. For the purposes of this definition, the term "adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community. The term "significantly sub-average general intellectual functioning" means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency.
[8] *Id* at 73.

severity, causes lifelong intellectual disability and developmental delays, and, in some people, causes health problems.[9]

Prader-Willi syndrome[10] is a complex genetic condition that affects many parts of the body. In infancy, this condition is characterized by weak muscle tone, feeding difficulties, poor growth, and delayed development. Beginning in childhood, affected individuals develop an insatiable appetite and chronic overeating. As a result, most experience rapid weight gain leading to obesity. People with Prader-Willi syndrome typically have an intellectual disability or a learning disability and behavioral problems.[11]

Phelan-McDermid syndrome[12] is a rare condition due to a chromosomal abnormality. Symptoms vary in range and severity but often include low muscle tone, difficulty moving, absent-to-severely delayed speech, autistic features, moderate-to-profound intellectual disability, and epilepsy.[13]

Autism

Autism is a pervasive, neurologically-based developmental disability of extended duration that has onset during infancy or childhood, which causes severe learning, communication, and behavioral disorders.[14] Autism spectrum disorder (ASD) includes autism, Asperger's syndrome, and any other pervasive developmental disorder.[15] The Centers for Disease Control and Prevention (CDC) estimates that approximately one in 44 children has ASD.[16] The CDC also estimates that over 5.4 million adults have ASD.[17]

Interactions with Law Enforcement for Individuals with Autism

A person's developmental disability may make interactions with law enforcement more challenging. For example, identifying a person with an ASD can be confusing to any person unfamiliar with the condition, including law enforcement. Law enforcement can mistake the signs of autism with behaviors typically associated with those of criminals.[18] Common attributes

[9] *Id*. Down syndrome is defined in statute as a disorder caused by the presence of an extra chromosome 21. Section 393.063(15), F.S.
[10] Prader-Willi syndrome is defined in statute as an inherited condition typified by neonatal hypotonia with failure to thrive, hyperphagia or an excessive drive to eat which leads to obesity usually at 18 to 36 months of age, mild to moderate intellectual disability, hypogonadism, short stature, mild facial dysmorphism, and a characteristic neurobehavior. Section 393.063(29), F.S.
[11] *Id*.
[12] Phelan-McDermid Syndrome is defined in statute as a disorder caused by the loss of the terminal segment of the long arm of chromosome 22, which occurs near the end of the chromosome at a location designated q13.3, typically leading to developmental delay, intellectual disability, dolicocephaly, hypotonia, or absent or delayed speech. Section 393.063(28), F.S.
[13] *Id*.
[14] Section 393.063(5), F.S.
[15] Section 627.6686(2)(b), F.S.
[16] The Centers for Disease Control and Prevention (The CDC), *Data & Statistics on Autism Spectrum Disorder*, available at https://www.cdc.gov/ncbddd/autism/data.html (last visited February 3, 2022).
[17] The CDC, *Key Findings: CDC Releases First Estimates of the Number of Adults Living with Autism Spectrum Disorder in the United States*, available at https://www.cdc.gov/ncbddd/autism/features/adults-living-with-autism-spectrum-disorder.html (last visited February 3, 2022).
[18] Randy Lambert, *How Changing the Wes Kleinert Fair Interview Act and Establishing Law Enforcement Academy Training Standards Will Help the Autism Community*, Child and Family Law Journal, p. 48 (2018), available at https://lawpublications.barry.edu/cflj/vol6/iss1/3 (last visited February 3, 2022).

of autism are communication differences and behaviors or thinking that are repetitive or restricted to an area of interest. These traits could be interpreted by law enforcement as not being compliant with questioning or direct instructions. A characteristic of ASD known as escalation poses a particular problem in encounters with law enforcement.[19] Escalation describes the response of a person with ASD under stress or in an unfamiliar situation.[20] Overwhelmed by the barrage of sensory information, a person with ASD may attempt to flee the uncomfortable situation, become combative, or simply shut down.[21] The individual may cover his or her ears and shriek, not knowing how or where to get help.[22] The presence of police lights and sirens, uniforms, loud and unfamiliar voices, or barking dogs often makes a difficult situation worse by contributing to the individual's sensory overload.[23]

Mental Health and Mental Illness

Mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to contribute to his or her community.[24]

The primary indicators used to evaluate an individual's mental health are:

- **Emotional well-being**- Perceived life satisfaction, happiness, cheerfulness, peacefulness;
- **Psychological well-being**- Self-acceptance, personal growth including openness to new experiences, optimism, hopefulness, purpose in life, control of one's environment, spirituality, self-direction, and positive relationships; and
- **Social well-being**- Social acceptance, beliefs in the potential of people and society as a whole, personal self-worth and usefulness to society, sense of community.

Mental illness is collectively all diagnosable mental disorders or health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.[25] Thus, mental health refers to an individual's mental state of well-being whereas mental illness signifies an alteration of that well-being. Mental illness affects millions of people in the United States each year. Nearly one in five adults lives with a mental illness.[26] During their childhood and adolescence, almost half of children will experience a mental disorder, though the proportion experiencing severe impairment during childhood and adolescence is much lower, at about 22 percent.[27]

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[19] Bernard J. Farber, *Police Interaction With Autistic Persons: The Need For Training*, Aele Monthly Law Journal, p. 106 (2009), available at https://www.aele.org/law/2009all07/2009-07MLJ101.pdf (last visited February 3, 2022).
[20] *Id*.
[21] *Id*.
[22] *Id*.
[23] *Id*.
[24] World Health Organization, *Mental Health: Strengthening Our Response*, https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response (last visited February 4, 2022).
[25] *Id*.
[26] National Institute of Mental Health (NIH), *Mental Illness*, https://www.nimh.nih.gov/health/statistics/mental-illness (last visited Feb.4, 2022).
[27] *Id*.

Some examples of common mental health illnesses or disorders that can negatively impact how a person interacts with others, such as law enforcement officers, include schizophrenia, bipolar disorder, borderline personality disorder, and antisocial personality disorder.[28]

Alzheimer's Disease

Alzheimer's disease is a form of dementia, a general term for memory loss. It is a progressive brain disorder that damages and eventually destroys brain cells, leading to memory loss and changes in the functions of the brain. In the early stages of Alzheimer's disease, memory loss is mild; in late-stages, individuals lose the ability to carry on a conversation and respond to their environment. Currently, the disease has no cure, but treatment can temporarily slow the worsening of symptoms.[29]

Florida has an increasing number of individuals with Alzheimer's disease. An estimated 580,000 Floridians have Alzheimer's disease.[30] The projected number of Floridians with Alzheimer's disease is estimated to increase by 24% to 720,000 individuals by 2025.[31]

Interactions with Law Enforcement for Individuals with Alzheimer's and Dementia

Many behaviors associated with Alzheimer's disease and dementia tend to increase a person's chance of interacting with law enforcement. Because these individuals are often unable to explain their unusual behavior, their actions are more easily misunderstood.[32] Common instances that can cause someone with Alzheimer's disease to interact with law enforcement include wandering, auto accidents, erratic driving, accidental breaking and entering due to confusion, and unintentional shoplifting.[33]

Florida Crime Information Center (FCIC) System

The Florida Crime Information Center (FCIC) system is an electronic database that provides criminal justice agencies with access to federal and state criminal justice information. The FCIC is managed by FDLE and contains information as reported to FDLE by law enforcement agencies through the state.[34]

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[28] *See* National Alliance Mental Illness, *Mental Health Disorders*, available at https://www.nami.org/About-Mental-Illness/Mental-Health-Conditions; Psychiatry Online, *Contact Between Police and People With Mental Disorders: A Review of Rates*, available at https://ps.psychiatryonline.org/doi/10.1176/appi.ps.201500312 (all sites last visited February 5, 2022).
[29] Alzheimer's Association, *2021 Alzheimer's Disease Facts and Figures*, p. 69, available at https://www.alz.org/media/documents/alzheimers-facts-and-figures.pdf (last visited February 3, 2022).
[30] The Department of Elder Affairs, *2021 Alzheimer's Disease Advisory Committee Annual Report*, p. 4, available at https://elderaffairs.org/wp-content/uploads/ADAC-Report-2021_FINAL.pdf (last visited February 3, 2022).
[31] *Id*.
[32] Alzheimer's Association, *Alzheimer's Disease Guide for Law Enforcement*, available at https://www.alz.org/national/documents/safereturn_lawenforcement.pdf (last visited February 3, 2022).
[33] *Id*.
[34] The FDLE, *The FCIC*, available at https://web.fdle.state.fl.us/pas/restricted/PAS/home/home.jsf (last visited February 3, 2022).

Voluntary Registry Systems

Law enforcement agencies nationwide have begun utilizing voluntary registry systems that provide officers with relevant information on individuals with special needs, including those with Alzheimer's disease.[35] Law enforcement agencies have found that such registries can:

- Promote community safety;
- Improve officer safety;
- Increase the speed and efficiency in which officers are able to respond, decreasing department liability;
- Reduce strain on department resources, both human and financial, during emergencies;
- Give community members peace of mind; and
- Promote community partnerships in responding to special needs community members.[36]
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Voluntary registry systems allow law enforcement to obtain information that assists in response to calls for service involving individuals with conditions such as Alzheimer's disease.[37]

Voluntary registry systems have also proven helpful in responding to individuals in other special needs populations. Departments utilize the system for community members living with ASD, developmental disabilities, attention deficit/hyperactivity disorder (ADHD), epilepsy, brain injury, mental illness, and other disabilities that may affect the way individuals interact and respond to law enforcement officers and other first responders.[38]

Project Safe and Sound

In 2007, the Polk County Sheriff's Office (PCSO) began utilizing a voluntary registry system, called Project Safe and Sound (PSS), which provides bracelets to registrants in an effort to help identify wandering individuals with Alzheimer's disease and special needs children. [39] Caregivers choosing to participate are asked to complete an application/authorization form which requires specific information about the child or adult being registered. The agency then enters the information into the PSS database, making the information accessible to all Polk County first responders. After the information is entered, the special needs person will be issued a "Safe & Sound" bracelet, which includes an assigned number. The bracelet also includes emergency contact information engraved on the plate of the bracelet. In the event a special needs child or adult wanders off and is found, responding law enforcement personnel will be able to contact the PCSO and confirm the identity of the individual.[40] First responders will be provided the caregiver's contact information so that the special needs person can be reunited with their caregiver.[41]

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[35] The International Association of Chiefs of Police (IACP), *A Guide to Law Enforcement on Voluntary Registry Programs for Vulnerable Populations*, p. 2, available at https://www.theiacp.org/sites/default/files/Alz%20Voluntary%20Registry_0.pdf (last visited February 3, 2022)(hereinafter cited as "The IACP Guide").
[36] *Id*.
[37] *Id*.
[38] *Id*. at 3.
[39] Polk County Sheriff's Office, *Project Safe & Sound*, available at http://www.polksheriff.org/programs-services/crime-prevention-programs-for-adults/project-safe-sound (last visited February 3, 2022).
[40] *Id*.
[41] *Id*.

The PCSO was highlighted in *A Guide to Law Enforcement on Voluntary Registry Programs for Vulnerable Adults* for using existing grant funds to build and sustain the PSS program and leveraging a partnership with a local engraver who engraves PSS bracelets with ID numbers at no cost to the program.[42]

Florida Special Needs Registry

The DOH, in coordination with its county health departments and each local emergency management agency in the state, developed a registry for persons with special needs to register with their local emergency management agency to receive assistance during a disaster. The statewide registry provides first responders with valuable information to prepare for disasters or other emergencies.[43] All records, data, information, correspondence, and communications relating to the registry are confidential and exempt from Florida's public records laws.[44]

III. Effect of Proposed Changes:

The bill creates s. 402.88, F.S., providing that the bill may be cited as the "Protect Our Loved Ones Act." The bill authorizes a local law enforcement agency to develop and maintain a database, known as the "Special Needs Registry" of persons who may have developmental, psychological, or other disability or condition that may be relevant to their interactions with a law enforcement officer, including but not limited to, a confirmed diagnosis of the following:

- Autism spectrum disorder;
- Alzheimer's disease;
- Dementia;
- Bipolar disorder; and
- Down syndrome.

Confirmation of a disability or condition must be certified by a licensed physician or licensed physician assistant or a licensed advanced practice registered nurse. Confirmation of a psychological condition must be certified by a licensed psychologist, licensed mental health counselor, or a psychiatrist.

Any adult with a disability may enroll himself or herself in the registry. If an individual with a disability is a minor or has been declared incapacitated a parent or legal guardian may enroll the individual in the registry.

An adult enrolled onto the registry by another person must be notified of that enrollment by the local law enforcement agency in writing within five business days after such enrollment. A minor enrolled onto the registry must be notified of that enrollment by the local law enforcement agency in writing within five business days after his or her 18th birthday.

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[42] The IACP Guide at 32 and 24.
[43] Florida Department of Health, *Florida Special Needs Registry*, available at: https://snr.flhealthresponse.com/ (last visited February 17, 2022).
[44] Sections 252.905, and 252.355(4), F.S., both provide a public records exemption for information related to the Florida Special Needs Registry.

A minor or an incapacitated individual may be removed from the registry by his or her parent or legal guardian. A competent person who is 18 years old may remove himself or herself from the registry. Upon a verbal or written request for removal of a person from the registry, a local law enforcement agency must remove an individual's information from the registry within five business days after the request is made.

The registry may include, but is not limited to the following:

- An enrollee's demographic and contact information, and information related to the enrollee's disability or condition;
- Contact information of those who have enrolled individuals on the registry;
- Any additional information including the certification of the condition or disability; and

The information provided to law enforcement officers under the bill may assist officers in their official duties by preparing them to respectfully and appropriately interact with an individual enrolled in the registry who has a relevant disability or condition.

The bill takes effect January 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not have a fiscal impact on state government. The bill may have a negative yet indeterminate fiscal impact on those law enforcement agencies that choose to create and maintain a Special Needs Registry.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 402.88 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.)

PCS (751752) by Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services):
The proposed committee substitute:

- Authorizes a local law enforcement agency, rather than the DOH, to develop and maintain Special Persons Registry databases. Each local law enforcement agency has discretion in whether or not they wish to establish such a database.
- Revises who can enroll an individual in the registry. If an individual with a disability is a minor or has been declared incapacitated a parent or legal guardian may enroll the individual in the registry. Deletes caregivers from the list of persons that may enroll an individual on the registry.
- Requires that an individual be notified in writing by the local law enforcement agency that they have been enrolled in the registry. A minor must be notified in writing that they are enrolled in the registry five days after his or her 18th birthday.
- Revises who can be enrolled onto the registry from those who may have a developmental, psychological, or other disability or condition to those with a confirmed diagnosis. Confirmation of the disability or condition must be made by a licensed physician, physician's assistant, or advanced practice registered nurse. Confirmation of a psychological condition must be made by a certified psychologist, mental health counselor, or a psychiatrist.
- Provides a means to remove an individual from the registry. Specifically:

- Any competent person over the age of 18 years old may remove oneself from the registry.
- A minor may be removed by his or her parents or legal guardian.
- An incapacitated adult may be removed by his or her legal guardian.

- Requires a law enforcement agency to remove a person from the registry upon a verbal or written request. The person must be removed from the registry within five business days after the request is made.
- Revises the information that may be included in the registry. Specifically:
  - Adds the certification of the condition or disability.
  - Removes a provision allowing any information requested by the DOH or the FDLE or otherwise held by a law enforcement agency, a county emergency management agency, or a local fire department for the purpose of assisting law enforcement officers, emergency medical personnel, or fire personnel in responding to a call.
- Authorizes a local law enforcement agency, rather than the FDLE, to provide relevant information from the registry to a law enforcement officer engaged in his or her official duties.
- Removes from the underlying bill a requirement that the DOH provide certain information to a law enforcement officer engaged in their duties upon an officer's request made through the Florida Crime Information Center.
- Revises the effective date from March 1, 2023, to January 1, 2023.

CS by Children, Families, and Elder Affairs on February 8, 2022:
The Committee Substitute:
- Changes the name of the voluntary registry created by the bill from "Registry of Persons with Special Needs" to the "Special Persons Registry".
- Changes the entity creating and maintaining the registry from the APD to the DOH.
- Revises the effective date to March 1, 2023.

B. Amendments:

None.

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

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

A bill to be entitled

An act relating to The Special Persons Registry; providing a short title; creating s. 402.88, F.S.; authorizing local law enforcement agencies to develop and maintain a database, to be known as the "The Special Persons Registry," for a specified purpose; providing for enrollment in and removal from the registry; specifying information the registry may include; authorizing local law enforcement agencies to provide relevant information from the registry to law enforcement officers under certain circumstances; providing an effective date.

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

Section 1. This act may be cited as the "Protect Our Loved Ones Act."

Section 2. Section 402.88, Florida Statutes, is created to read:

402.88 Special Persons Registry in interactions with law enforcement.—

(1)(a) A local law enforcement agency may develop and maintain a database, to be known as "The Special Persons Registry," listing persons who have developmental, psychological, or other disabilities or conditions that may be relevant to their interactions with law enforcement officers. Persons with any type of confirmed developmental, psychological,

or other disability or condition, including, but not limited to, autism spectrum disorder, Alzheimer's disease or a dementia-related disorder, bipolar disorder, or Down syndrome, may be enrolled in the registry. The confirmation of the disability or condition must be certified by a physician or physician assistant licensed under chapter 458 or chapter 459 or an advanced practice registered nurse licensed under chapter 464. In the case of psychological conditions, the confirmation of the condition must be certified by a psychologist licensed under chapter 490, a mental health counselor licensed under chapter 491, or a psychiatrist as defined in s. 394.455. An adult with a disability may enroll himself or herself in the registry. If a person with a disability has been declared incapacitated under chapter 744, a parent or legal guardian of the person may enroll him or her in the registry.

(b) A minor with a disability may be enrolled in the registry by his or her parent or legal guardian. An adult enrolled by another person must be notified of that enrollment by the local law enforcement agency in writing at his or her address of record within 5 business days after enrollment in the registry. A minor who was enrolled by another person must be notified by the agency in writing of that enrollment at his or her address of record within 5 business days after his or her 18th birthday.

(c) A registration is valid until the person is removed from the registry. A minor or an incapacitated adult may be removed from the registry by the minor's parent or legal guardian or the adult's legal guardian, respectively. A competent person who has reached 18 years of age may also choose

to have his or her name removed from the registry. Upon a verbal or written request for removal of a person from the registry, the local law enforcement agency must remove the person's information from the registry within 5 business days after the request is made.

(2) The registry may include, but need not be limited to, any of the following information:

(a) The listed person's name, contact information, personal identifying information, and disability or condition that may be relevant to interactions with law enforcement officers.

(b) If a person did not enroll himself or herself, the name, contact information, and personal identifying information of the person who enrolled the listed person in the registry.

(c) Any additional information provided, including the certification of the condition or disability.

(3) The local law enforcement agency may provide relevant information from the registry to a law enforcement officer engaged in his or her official duties.

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

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 Appropriations

BILL:	CS/SB 1040
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senator Brodeur
SUBJECT:	Special Persons Registry
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Fav/CS**
2.	Gerbrandt	Money	AHS	**Recommend: Fav/CS**
3.	Gerbrandt	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1040, known as the "Protect Our Loved Ones" Act, requires the Florida Department of Health (DOH) to develop and maintain a database, known as the "Special Needs Registry", of persons who may have developmental, psychological, or other disabilities or conditions.

Parents, guardians, and caregivers may voluntarily enroll individuals in the registry. The registry may include:

- An enrollee's demographic and contact information, and information related to the enrollee's disability or condition;
- Contact information of caregivers who have enrolled individuals on the registry; and
- Certain information requested by the DOH or the Florida Department of Law Enforcement (FDLE).

The bill requires the FDLE to provide information from the registry to law enforcement officers to assist in performance of their official duties.

The costs of creating and maintaining the registry will have a significant fiscal impact on the DOH. See Section V. Fiscal Impact Statement.

The bill takes effect March 1, 2023.

II. Present Situation:

Developmental Disabilities

Developmental disabilities[1] include autism, cerebral palsy, spina bifida, intellectual disabilities, Down syndrome, Prader-Willi syndrome, and Phelan-McDermid syndrome.[2]

Cerebral palsy[3] is a group of disabling symptoms of extended duration, which results from damage to the developing brain that may occur before, during, or after birth and that results in the loss or impairment of control over voluntary muscles.[4]

Spina bifida[5] is a birth defect in the vertebral column in which part of the spinal cord, which is normally protected within the vertebral column, is exposed. Spina bifida is caused by the failure of the neural tube to close during embryonic development. The neural tube is the embryonic structure that gives rise to the brain and spinal cord. People with spina bifida can have difficulty with bladder and bowel incontinence, cognitive (learning) problems, and limited mobility.[6]

Individuals suffering from intellectual disabilities have significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior, which manifests before the age of 18.[7] Such individuals have certain limitations in both mental functioning and in adaptive skills such as communicating, self-care, and social skills. These limitations will cause a person to learn and develop more slowly. People with intellectual disabilities may take longer to learn to speak, walk, and take care of their personal needs such as dressing or eating.[8]

Down syndrome is a genetic disorder caused when abnormal cell division results in extra genetic material from chromosome 21. This genetic disorder, also known as trisomy 21, varies in severity, causes lifelong intellectual disability and developmental delays, and, in some people, causes health problems.[9]

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[1] Developmental disability is defined as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.
[2] Agency for Persons with Disabilities, *Long-Range Program Plan (2021)*, available at http://floridafiscalportal.state.fl.us/Document.aspx?ID=23172&DocType=PDF (last visited February 3, 2022) (hereinafter cited as "The Long-Range Plan").
[3] Section 393.063(6), F.S.
[4] *Id*.
[5] Spina bifida is defined in statute as a medical diagnosis of spina bifida cystica or myelomeningocele. Section 393.063(41), F.S.
[6] The Long-Range Plan, p. 79.
[7] Section 393.063(24), F.S. For the purposes of this definition, the term "adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community. The term "significantly sub-average general intellectual functioning" means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency.
[8] *Id* at 73.
[9] *Id*. Down syndrome is defined in statute as a disorder caused by the presence of an extra chromosome 21. Section 393.063(15), F.S.

Prader-Willi syndrome[10] is a complex genetic condition that affects many parts of the body. In infancy, this condition is characterized by weak muscle tone, feeding difficulties, poor growth, and delayed development. Beginning in childhood, affected individuals develop an insatiable appetite and chronic overeating. As a result, most experience rapid weight gain leading to obesity. People with Prader-Willi syndrome typically have an intellectual disability or a learning disability and behavioral problems.[11]

Phelan-McDermid syndrome[12] is a rare condition due to a chromosomal abnormality. Symptoms vary in range and severity but often include low muscle tone, difficulty moving, absent-to-severely delayed speech, autistic features, moderate-to-profound intellectual disability, and epilepsy.[13]

Autism

Autism is a pervasive, neurologically-based developmental disability of extended duration that has onset during infancy or childhood, which causes severe learning, communication, and behavioral disorders.[14] Autism spectrum disorder (ASD) includes autism, Asperger's syndrome, and any other pervasive developmental disorder.[15] The Centers for Disease Control and Prevention (CDC) estimates that approximately one in 44 children has ASD.[16] The CDC also estimates that over 5.4 million adults have ASD.[17]

Interactions with Law Enforcement for Individuals with Autism

A person's developmental disability may make interactions with law enforcement more challenging. For example, identifying a person with an ASD can be confusing to any person unfamiliar with the condition, including law enforcement. Law enforcement can mistake the signs of autism with behaviors typically associated with those of criminals.[18] Common attributes of autism are communication differences and behaviors or thinking that are repetitive or restricted to an area of interest. These traits could be interpreted by law enforcement as not being compliant with questioning or direct instructions. A characteristic of ASD known as escalation

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[10] Prader-Willi syndrome is defined in statute as an inherited condition typified by neonatal hypotonia with failure to thrive, hyperphagia or an excessive drive to eat which leads to obesity usually at 18 to 36 months of age, mild to moderate intellectual disability, hypogonadism, short stature, mild facial dysmorphism, and a characteristic neurobehavior. Section 393.063(29), F.S.
[11] *Id*.
[12] Phelan-McDermid Syndrome is defined in statute as a disorder caused by the loss of the terminal segment of the long arm of chromosome 22, which occurs near the end of the chromosome at a location designated q13.3, typically leading to developmental delay, intellectual disability, dolicocephaly, hypotonia, or absent or delayed speech. Section 393.063(28), F.S.
[13] *Id*.
[14] Section 393.063(5), F.S.
[15] Section 627.6686(2)(b), F.S.
[16] The Centers for Disease Control and Prevention (The CDC), *Data & Statistics on Autism Spectrum Disorder*, available at https://www.cdc.gov/ncbddd/autism/data.html (last visited February 3, 2022).
[17] The CDC, *Key Findings: CDC Releases First Estimates of the Number of Adults Living with Autism Spectrum Disorder in the United States***,** available at https://www.cdc.gov/ncbddd/autism/features/adults-living-with-autism-spectrum-disorder.html (last visited February 3, 2022).
[18] Randy Lambert, *How Changing the Wes Kleinert Fair Interview Act and Establishing Law Enforcement Academy Training Standards Will Help the Autism Community*, Child and Family Law Journal, p. 48 (2018), available at https://lawpublications.barry.edu/cflj/vol6/iss1/3 (last visited February 3, 2022).

poses a particular problem in encounters with law enforcement.[19] Escalation describes the response of a person with ASD under stress or in an unfamiliar situation.[20] Overwhelmed by the barrage of sensory information, a person with ASD may attempt to flee the uncomfortable situation, become combative, or simply shut down.[21] The individual may cover his or her ears and shriek, not knowing how or where to get help.[22] The presence of police lights and sirens, uniforms, loud and unfamiliar voices, or barking dogs often makes a difficult situation worse by contributing to the individual's sensory overload.[23]

Mental Health and Mental Illness

Mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to contribute to his or her community.[24]

The primary indicators used to evaluate an individual's mental health are:

- **Emotional well-being**- Perceived life satisfaction, happiness, cheerfulness, peacefulness;
- **Psychological well-being**- Self-acceptance, personal growth including openness to new experiences, optimism, hopefulness, purpose in life, control of one's environment, spirituality, self-direction, and positive relationships; and
- **Social well-being**- Social acceptance, beliefs in the potential of people and society as a whole, personal self-worth and usefulness to society, sense of community.

Mental illness is collectively all diagnosable mental disorders or health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.[25] Thus, mental health refers to an individual's mental state of well-being whereas mental illness signifies an alteration of that well-being. Mental illness affects millions of people in the United States each year. Nearly one in five adults lives with a mental illness.[26] During their childhood and adolescence, almost half of children will experience a mental disorder, though the proportion experiencing severe impairment during childhood and adolescence is much lower, at about 22 percent.[27]

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[19] Bernard J. Farber, *Police Interaction With Autistic Persons: The Need For Training*, Aele Monthly Law Journal, p. 106 (2009), available at https://www.aele.org/law/2009all07/2009-07MLJ101.pdf (last visited February 3, 2022).
[20] *Id*.
[21] *Id*.
[22] *Id*.
[23] *Id*.
[24] World Health Organization, *Mental Health: Strengthening Our Response*, https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response (last visited February 4, 2022).
[25] *Id*.
[26] National Institute of Mental Health (NIH), *Mental Illness*, https://www.nimh.nih.gov/health/statistics/mental-illness (last visited Feb.4, 2022).
[27] *Id*.

Some examples of common mental health illnesses or disorders that can negatively impact how a person interacts with others, such as law enforcement officers, include schizophrenia, bipolar disorder, borderline personality disorder, and antisocial personality disorder.[28]

Alzheimer's Disease

Alzheimer's disease is a form of dementia, a general term for memory loss. It is a progressive brain disorder that damages and eventually destroys brain cells, leading to memory loss and changes in the functions of the brain. In the early stages of Alzheimer's disease, memory loss is mild; in late-stages, individuals lose the ability to carry on a conversation and respond to their environment. Currently, the disease has no cure, but treatment can temporarily slow the worsening of symptoms.[29]

Florida has an increasing number of individuals with Alzheimer's disease. An estimated 580,000 Floridians have Alzheimer's disease.[30] The projected number of Floridians with Alzheimer's disease is estimated to increase by 24% to 720,000 individuals by 2025.[31]

Interactions with Law Enforcement for Individuals with Alzheimer's and Dementia

Many behaviors associated with Alzheimer's disease and dementia tend to increase a person's chance of interacting with law enforcement. Because these individuals are often unable to explain their unusual behavior, their actions are more easily misunderstood.[32] Common instances that can cause someone with Alzheimer's disease to interact with law enforcement include wandering, auto accidents, erratic driving, accidental breaking and entering due to confusion, and unintentional shoplifting.[33]

Florida Crime Information Center (FCIC) System

The Florida Crime Information Center (FCIC) system is an electronic database that provides criminal justice agencies with access to federal and state criminal justice information. The FCIC is managed by FDLE and contains information as reported to FDLE by law enforcement agencies through the state.[34]

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[28] *See* National Alliance Mental Illness, *Mental Health Disorders*, available at https://www.nami.org/About-Mental-Illness/Mental-Health-Conditions; Psychiatry Online, *Contact Between Police and People With Mental Disorders: A Review of Rates*, available at https://ps.psychiatryonline.org/doi/10.1176/appi.ps.201500312 (all sites last visited February 5, 2022).
[29] Alzheimer's Association, *2021 Alzheimer's Disease Facts and Figures*, p. 69, available at https://www.alz.org/media/documents/alzheimers-facts-and-figures.pdf (last visited February 3, 2022).
[30] The Department of Elder Affairs, *2021 Alzheimer's Disease Advisory Committee Annual Report*, p. 4, available at https://elderaffairs.org/wp-content/uploads/ADAC-Report-2021_FINAL.pdf (last visited February 3, 2022).
[31] *Id*.
[32] Alzheimer's Association, *Alzheimer's Disease Guide for Law Enforcement*, available at https://www.alz.org/national/documents/safereturn_lawenforcement.pdf (last visited February 3, 2022).
[33] *Id*.
[34] The FDLE, *The FCIC*, available at https://web.fdle.state.fl.us/pas/restricted/PAS/home/home.jsf (last visited February 3, 2022).

Voluntary Registry Systems

Law enforcement agencies nationwide have begun utilizing voluntary registry systems that provide officers with relevant information on individuals with special needs, including those with Alzheimer's disease.[35] Law enforcement agencies have found that such registries can:

- Promote community safety;
- Improve officer safety;
- Increase the speed and efficiency in which officers are able to respond, decreasing department liability;
- Reduce strain on department resources, both human and financial, during emergencies;
- Give community members peace of mind; and
- Promote community partnerships in responding to special needs community members.[36]

Voluntary registry systems allow law enforcement to obtain information that assists in response to calls for service involving individuals with conditions such as Alzheimer's disease.[37]

Voluntary registry systems have also proven helpful in responding to individuals in other special needs populations. Departments utilize the system for community members living with ASD, developmental disabilities, attention deficit/hyperactivity disorder (ADHD), epilepsy, brain injury, mental illness, and other disabilities that may affect the way individuals interact and respond to law enforcement officers and other first responders.[38]

Project Safe and Sound

In 2007, the Polk County Sheriff's Office (PCSO) began utilizing a voluntary registry system, called Project Safe and Sound (PSS), which provides bracelets to registrants in an effort to help identify wandering individuals with Alzheimer's disease and special needs children. [39] Caregivers choosing to participate are asked to complete an application/authorization form which requires specific information about the child or adult being registered. The agency then enters the information into the PSS database, making the information accessible to all Polk County first responders. After the information is entered, the special needs person will be issued a "Safe & Sound" bracelet, which includes an assigned number. The bracelet also includes emergency contact information engraved on the plate of the bracelet. In the event a special needs child or adult wanders off and is found, responding law enforcement personnel will be able to contact the PCSO and confirm the identity of the individual.[40] First responders will be provided the caregiver's contact information so that the special needs person can be reunited with their caregiver.[41]

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[35] The International Association of Chiefs of Police (IACP), *A Guide to Law Enforcement on Voluntary Registry Programs for Vulnerable Populations*, p. 2, available at https://www.theiacp.org/sites/default/files/Alz%20Voluntary%20Registry_0.pdf (last visited February 3, 2022)(hereinafter cited as "The IACP Guide").
[36] *Id*.
[37] *Id*.
[38] *Id*. at 3.
[39] Polk County Sheriff's Office, *Project Safe & Sound*, available at http://www.polksheriff.org/programs-services/crime-prevention-programs-for-adults/project-safe-sound (last visited February 3, 2022).
[40] *Id*.
[41] *Id*.

The PCSO was highlighted in *A Guide to Law Enforcement on Voluntary Registry Programs for Vulnerable Adults* for using existing grant funds to build and sustain the PSS program and leveraging a partnership with a local engraver who engraves PSS bracelets with ID numbers at no cost to the program.[42]

Florida Special Needs Registry

The DOH, in coordination with its county health departments and each local emergency management agency in the state, developed a registry for persons with special needs to register with their local emergency management agency to receive assistance during a disaster. The statewide registry provides first responders with valuable information to prepare for disasters or other emergencies.[43] All records, data, information, correspondence, and communications relating to the registry are confidential and exempt from Florida's public records laws.[44]

III. Effect of Proposed Changes:

The bill creates s. 402.88, F.S., providing that the bill may be cited as the "Protect Our Loved Ones Act." The bill requires the DOH to develop and maintain a database, known as the "Special Needs Registry" of persons who may have developmental, psychological, or other disabilities or conditions that may be relevant to their interactions with law enforcement officers, including but not limited to:

- Autism spectrum disorder;
- Alzheimer's disease;
- Dementia;
- Bipolar disorder; and
- Down syndrome.

Parents, guardians, and caregivers may voluntarily enroll individuals in the registry, and persons 18 and older may self-enroll. The registry may include:

- An enrollee's demographic and contact information, and information related to the enrollee's disability or condition;
- Contact information of those who have enrolled individuals on the registry;
- Any additional information provided by an enrollee or their caregiver; and
- Any information requested by the DOH or the FDLE or otherwise held by a:
  - Law enforcement agency;
  - County emergency management agency; or
  - Local fire department for the purpose of assisting any of the following in responding to call for service:
    - Assisting law enforcement officers;
    - Emergency medical personnel; or
    - Fire personnel.

[42] The IACP Guide at 32 and 24.
[43] Florida Department of Health, *Florida Special Needs Registry*, available at: https://snr.flhealthresponse.com/ (last visited February 17, 2022).
[44] Sections 252.905, and 252.355(4), F.S., both provide a public records exemption for information related to the Florida Special Needs Registry.

The bill requires the FDLE to provide relevant information from the registry to law enforcement officers in performance of their official duties. The bill also requires the DOH to provide such information to a law enforcement officer engaged in their duties upon an officer's request made through the FCIC.

The information provided to law enforcement officers under the bill may assists officers by preparing them to respectfully and appropriately interact with an individual enrolled in the registry who has a relevant condition.

The bill takes effect March 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will have a significant negative fiscal impact on the Department of Health. To build a new system or modify the current Florida Special Needs Registry, and maintain and manage the registry the DOH estimates a cost of $1.2 million over two years and two full-time-equivalent positions. The current Florida Special Needs Registry is funded from federal preparedness grants. Any new system or modifications would require a separate funding source.[45]

According to the Florida Department of Law Enforcement (FDLE) the bill will require the development of an interface with the registry at an estimated cost of $80,000.[46]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 402.88 of the Florida Statutes.

IX. Additional Information:

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

CS by Children, Families, and Elder Affairs on February 8, 2022:
The Committee Substitute:
- Changes the name of the voluntary registry created by the bill from "Registry of Persons with Special Needs" to the "Special Persons Registry".
- Changes the entity creating and maintaining the registry from the APD to the DOH.
- Revises the effective date to March 1, 2023.

B. Amendments:

None.

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

[45] Email from Andrew Love, DOH Legislative Affairs Director (February 17, 2022) (on file with the Appropriations Subcommittee on Health and Human Services).
[46] Florida Department of Law Enforcement, *Senate Bill 1040 Fiscal Analysis* (January 7, 2022)(on file with the Appropriations Subcommittee on Health and Human Services).

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

586-02803-22 20221040c1

A bill to be entitled

An act relating to the Special Persons Registry; providing a short title; creating s. 402.88, F.S.; requiring the Department of Health to develop and maintain a database, to be known as the "Special Persons Registry," for a specified purpose; providing for enrollment in the registry; specifying information the registry may include; requiring the Department of Law Enforcement to provide relevant information from the registry to law enforcement officers upon request through a specified system; providing an effective date.

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

Section 1. This act may be cited as the "Protect Our Loved Ones Act."

Section 2. Section 402.88, Florida Statutes, is created to read:

402.88 Special Persons Registry for interactions with law enforcement.—

(1) The Department of Health shall develop and maintain a database, to be known as the "Special Persons Registry," of persons who may have developmental, psychological, or other disabilities or conditions that may be relevant to their interactions with law enforcement officers. Parents, guardians, and caregivers may enroll in the registry a person of any age with any type of developmental, psychological, or other disability or condition, including, but not limited to, autism

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

586-02803-22 20221040c1

spectrum disorder, Alzheimer's disease, dementia, bipolar disorder, and Down syndrome. Persons may also enroll themselves if they are 18 years of age or older. The registry may include, but need not be limited to, any of the following information:

(a) An enrollee's name, contact information, personal identifying information, and disability or condition that may be relevant to interactions with law enforcement officers.

(b) If a person did not enroll themselves, the name, contact information, and personal identifying information of the parent, guardian, or caregiver who enrolled the person in the registry.

(c) Any additional information provided by an enrollee or an enrollee's parent, guardian, or caregiver.

(d) Any information requested by the Department of Health or the Department of Law Enforcement or otherwise held by a law enforcement agency, a county emergency management agency, or a local fire department for the purpose of assisting law enforcement officers, emergency medical personnel, or fire personnel in responding to a call for service.

(2) The Department of Law Enforcement shall provide information from the registry to law enforcement officers to assist officers in the performance of their official duties. The registry shall provide such relevant information to a law enforcement officer engaged in his or her official duties upon an officer's request made through the Florida Crime Information Center.

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

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

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 22, 2022

I respectfully request that **Senate Bill 1040 & Senate Bill 1042**, relating to **Registry of Persons with Special Needs & Public Records/Registry of Persons with Special Needs,** 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

The Florida Senate

APPEARANCE RECORD

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

2/28/22
Meeting Date

Approp.
Committee

1040
Bill Number or Topic

Amendment Barcode (if applicable)

Name Olivia Babis

Phone 850-617-9718

Address 2473 Care Dr. 200
Street

Email olivab@drflorida.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: Disability Rights 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)

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

2/28/2022
Meeting Date

Appropriations
Committee

SB 1040
Bill Number or Topic

Amendment Barcode (if applicable)

Name Nancy Lawther, PhD.

Phone 407 855-7601

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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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2/28/2022
Meeting Date

Appropriations
Committee

CS/SB 1040
Bill Number or Topic

Amendment Barcode (if applicable)

Name Laurette Philipsen

Phone 727-484-0237

Address 7240 Westwind Dr
Street

Email advocate.philipsen@gmail.com

Port Richey FL 34668
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 Appropriations

BILL:	PCS/CS/SB 1042 (873190)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Children, Families, and Elder Affairs Committee; and Senator Brodeur
SUBJECT:	Public Records/Special Persons Registry
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Fav/CS**
2.	Gerbrandt	Money	AHS	**Recommend: Fav/CS**
3.	Gerbrandt	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1042 creates an exemption from the public records requirements of section 119.07(1), Florida Statutes, and section 24(a), Art. I of the State Constitution for the following information relating to the enrollment of individuals on the Special Needs Registry (SNR) created by SB 1040:

- Records;
- Data;
- Information;
- Correspondence; and
- Communications.

The bill also applies the exemption to any locally maintained registry that is substantially similar to the SNR. The bill specifies that such information may not be disclosed except, upon request, to:

- A law enforcement agency;
- A county emergency management agency;
- A local fire department; or
- As otherwise specifically authorized by the bill.

The bill provides for an Open Government Sunset review and contains a statement of public necessity as required by the State Constitution.

The bill also applies the exemption retroactively to confidential and exempt information held by one of the agency entities listed above before, on, or after the effective date of the act.

The bill is not expected to have a fiscal impact. See Section V. Fiscal Impact Statement.

The bill provides that the act shall take effect on the same date that SB 1040 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. CS/CS/SB 1040 has an effective date of January 1, 2023.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

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

Executive Agency Records – The Public Records Act

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

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

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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."

> 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]

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]

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[6] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[7] Section 119.07(1)(a), F.S.
[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[9] FLA. CONST. art. I, s. 24(c).
[10] *Id*. *See, e.g.*, *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).
[11] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[12] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[13] *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).
[14] *Id*.
[15] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

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 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

[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.
[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.

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]

Autism

Autism is a pervasive, neurologically-based developmental disability of extended duration that has onset during infancy or childhood, which causes severe learning, communication, and behavioral disorders.[27] Autism spectrum disorder (ASD) includes autism, Asperger's syndrome, and any other pervasive developmental disorder.[28] The Centers for Disease Control and Prevention (CDC) estimates that approximately one in 44 children has ASD.[29] The CDC also estimates that over 5.4 million adults have ASD.[30]

Interactions with Law Enforcement for Individuals with Autism

A person's developmental disability may make interactions with law enforcement more challenging. For example, identifying a person with an ASD can be confusing to any person unfamiliar with the condition, including law enforcement. Law enforcement can mistake the signs of autism with behaviors typically associated with those of criminals.[31] Common attributes of autism are communication differences and behaviors or thinking that are repetitive or restricted to an area of interest. These traits could be interpreted by law enforcement as not being compliant with questioning or direct instructions. A characteristic of ASD known as escalation poses a particular problem in encounters with law enforcement.[32] Escalation describes the response of a person with ASD under stress or in an unfamiliar situation.[33] Overwhelmed by the barrage of sensory information, a person with ASD may attempt to flee the uncomfortable situation, become combative, or simply shut down.[34] The individual may cover his or her ears and shriek, not knowing how or where to get help.[35] The presence of police lights and sirens, uniforms, loud and unfamiliar voices, or barking dogs often makes a difficult situation worse by contributing to the individual's sensory overload.[36]

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[26] Section 119.15(7), F.S.
[27] Section 393.063(5), F.S.
[28] Section 627.6686(2)(b), F.S.
[29] The Centers for Disease Control and Prevention (The CDC), *Data & Statistics on Autism Spectrum Disorder*, available at https://www.cdc.gov/ncbddd/autism/data.html (last visited February 3, 2022).
[30] The CDC, *Key Findings: CDC Releases First Estimates of the Number of Adults Living with Autism Spectrum Disorder in the United States***,** available at https://www.cdc.gov/ncbddd/autism/features/adults-living-with-autism-spectrum-disorder.html (last visited February 3, 2022).
[31] Randy Lambert *"How Changing the Wes Kleinert Fair Interview Act and Establishing Law Enforcement Academy Training Standards Will Help the Autism Community,"* Child and Family Law Journal, p. 48 (2018), available at https://lawpublications.barry.edu/cflj/vol6/iss1/3 (last visited February 3, 2022).
[32] Bernard J. Farber, *Police Interaction With Autistic Persons: The Need For Training*, Aele Monthly Law Journal, p. 106 (2009), available at https://www.aele.org/law/2009all07/2009-07MLJ101.pdf (last visited February 3, 2022).
[33] *Id*.
[34] *Id*.
[35] *Id*.
[36] *Id*.

Alzheimer's Disease

Alzheimer's disease is a form of dementia, a general term for memory loss. It is a progressive brain disorder that damages and eventually destroys brain cells, leading to memory loss and changes in the functions of the brain. In the early stages of Alzheimer's disease, memory loss is mild; in late-stages, individuals lose the ability to carry on a conversation and respond to their environment. Currently, the disease has no cure, but treatment can temporarily slow the worsening of symptoms.[37]

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Many behaviors associated with Alzheimer's disease and dementia tend to increase a person's chance of interacting with law enforcement. Because these individuals are often unable to explain their unusual behavior, their actions are more easily misunderstood.[40] Common instances that can cause someone with Alzheimer's disease to interact with law enforcement include wandering, auto accidents, erratic driving, accidental breaking and entering due to confusion, and unintentional shoplifting.[41]

Voluntary Registry Systems

Law enforcement agencies nationwide have begun utilizing voluntary registry systems that provide officers with relevant information on individuals with special needs, including those with Alzheimer's disease.[42] Law enforcement agencies have found that such registries can:

- Promote community safety;
- Improve officer safety;
- Increase the speed and efficiency in which officers are able to respond, decreasing department liability;
- Reduce strain on department resources (human and financial) during emergencies;
- Give community members peace of mind; and
- Promote community partnerships in responding to special needs community members.[43]

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[37] Alzheimer's Association, *2021 Alzheimer's Disease Facts and Figures*, available at https://www.alz.org/media/documents/alzheimers-facts-and-figures.pdf (last visited February 3, 2022).
[38] The Department of Elder Affairs, *2021 Alzheimer's Disease Advisory Committee Annual Report*, p. 4, available at https://elderaffairs.org/wp-content/uploads/ADAC-Report-2021_FINAL.pdf (last visited February 3, 2022).
[39] *Id*.
[40] Alzheimer's Association, *Alzheimer's Disease Guide for Law Enforcement*, available at https://www.alz.org/national/documents/safereturn_lawenforcement.pdf (last visited February 3, 2022).
[41] *Id*.
[42] The International Association of Chiefs of Police (IACP), *A Guide to Law Enforcement on Voluntary Registry Programs for Vulnerable Populations*, p. 2, available at https://www.theiacp.org/sites/default/files/Alz%20Voluntary%20Registry_0.pdf (last visited February 3, 2022) (hereinafter cited as "The IACP Guide").
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Voluntary registry systems allow law enforcement to obtain information that assists in response to calls for service involving individuals with conditions such as Alzheimer's disease.[44]

Voluntary registry systems have also proven helpful in responding to individuals in other special needs populations. Departments utilize the system for community members living with ASD, developmental disabilities, attention deficit/ hyperactivity disorder (ADHD), epilepsy, brain injury, mental illness, and other disabilities that may affect the way individuals interact and respond to law enforcement officers and other first responders.[45]

Confidentiality of Information

Voluntary registry systems generally contain large amounts of personal and sensitive information. Confidentiality concerns, coupled with a general fear of law enforcement prevalent in some communities, could hinder community willingness to participate in voluntary registry programs.[46] Some community members may be hesitant to participate due to fear exploitation of registry data.[47] Others fear that registry information collected may be used to violate the rights of special needs individuals by inappropriately releasing the information to outside parties and entities.[48]

Some agencies utilizing voluntary registry systems use disclaimers, waivers, or releases on voluntary registry systems' registration forms or questionnaires to notify registrants that providing data is voluntary and to ensure that registrants and their caregivers know that information will be used solely for the purpose of assisting first responders in providing service.[49] Other individuals have also expressed concerns regarding Health Insurance Portability and Accountability Act (HIPAA) compliance of registry information collection and storage.[50]

III. Effect of Proposed Changes:

The bill amends the proposed s. 402.88, F.S., which would be created by SB 1040. The bill creates an exemption from the public records requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution for the following information relating to the enrollment of individuals on the Special Needs Registry (SNR) created by SB 1040:

- Records;
- Data;
- Information;
- Correspondence; and
- Communications.

The bill also applies the exemption to any locally maintained registry that is substantially similar to the SNR. The bill specifies that such information may not be disclosed except, upon request, to:

[44] *Id*.
[45] *Id*. at 3.
[46] The IACP Guide at 21.
[47] *Id*.
[48] *Id*.
[49] *Id*.
[50] *Id*.

- A law enforcement agency;
- A county emergency management agency;
- A local fire department.

Any of the above-listed agency entities are permitted to disclose information otherwise deemed confidential and exempt by the bill to others not specifically listed only under the following circumstances:

- With the express written consent of the registry enrollee or the legally authorized representative of such enrollee;
- In a medical emergency;
- By court order upon a finding of good cause;
- To another governmental agency when needed for the performance of its duties and responsibilities; or
- In the interest of public safety, to;
  - Assist in locating the enrollee; or
  - Promote the safety or well-being of the enrollee, as determined by the law enforcement agency.

The bill includes a public necessity statement, specifying the need to make all records, data, information, correspondence, and communications relating the enrollment of persons in the SNR confidential and exempt from Florida's public records laws. The bill provides that such records are likely to include confidential medical information and sensitive personal information of individuals on the SNR. The bill states that the potential disclosure of such information will deter enrollment, thereby depriving law enforcement of information which would enable them to interact with those eligible for enrollment in safe and appropriate ways.

The bill is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2027, unless reviewed and saved from repeal by the Legislature.

The bill also applies the exemption retroactively to confidential and exempt information held by one of the agency entities listed above before, on, or after the effective date of the act.

The bill provides that the act shall take effect on the same date that SB 1040 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

CS/CS/SB 1040 has an effective date of January 1, 2023.

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 Art. VII, s. 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 records, data, information, correspondence, and communication relating to the enrollment of individuals on the SNR. 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 sensitive personal information, and confidential medical information, of individuals enrolled in the SNR. This bill exempts only such 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.

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:

The bill does not appear to give the APD the option or ability to request information from any other agencies who have information as contemplated in SB 1040.[51]

VIII. Statutes Affected:

This bill substantially amends section 402.88 of the Florida Statutes, if created by SB 1040.

IX. Additional Information:

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

PCS (873190) by Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services):
The proposed committee substitute conforms the public records exemption to the changes made by CS/CS/SB 1040. The committee substitute also clarifies that the public records exemption applies retroactively to all confidential information held by a law enforcement agency, a county emergency management agency, or a local fire department *before, on, or after* the effective date of the bill, rather than just before the effective date of the bill.

CS by Children, Families, and Elder Affairs on February 8, 2022:
The Committee Substitute:

- Changes references to the voluntary registry from "Registry of Persons with Special Needs" to the "Special Needs Registry".

B. Amendments:

None.

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

[51] The APD, *Agency Analysis of HB 735*, p. 2. (on file with the Senate Children, Families, and Elder Affairs Committee).

873190

576-03258-22

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

A bill to be entitled

An act relating to public records; amending s. 402.88, F.S.; providing an exemption from public records requirements for all records, data, information, correspondence, and communications relating to the enrollment of persons in the Special Persons Registry maintained by the Department of Health; providing exceptions; authorizing law enforcement agencies, county emergency management agencies, and local fire departments to further disclose confidential and exempt information under certain circumstances; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing applicability; providing a contingent effective date.

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

Section 1. Subsection (4) is added to section 402.88, Florida Statutes, as created by SB 1040 or similar legislation, to read:

402.88 Special Persons Registry in interactions with law enforcement; public records exemption.—

(4)(a) All records, data, information, correspondence, and communications relating to the enrollment of persons as provided in subsection (1) and such information included in any locally maintained registry that is substantially similar to the

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registry in subsections (1) and (2) are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may not be disclosed except, upon request, to a law enforcement agency, a county emergency management agency, or a local fire department, or as otherwise specifically authorized by this section.

(b) A law enforcement agency, county emergency management agency, or local fire department in possession of materials described in paragraph (a) may further disclose information contained in such materials to others not specifically listed only as follows:

1. With the express written consent of the registry enrollee or the legally authorized representative of such enrollee;

2. In a medical emergency;

3. By court order upon a finding of good cause;

4. To another governmental agency in the performance of its duties and responsibilities; or

5. In the interest of public safety, to assist in locating the enrollee, or to promote the safety or well-being of the enrollee, as determined by the law enforcement agency.

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

Section 2. The Legislature finds that it is a public necessity to make all records, data, information, correspondence, and communications relating to the enrollment of persons in the Special Persons Registry under s. 402.88, Florida

Statutes, confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Such records would likely include confidential medical information and sensitive personal information about the persons listed in the registry. The potential disclosure of such information would deter persons from being enrolled in the registry, which would then deprive law enforcement officers of information that would better enable them to interact with such persons in safe and appropriate ways.

Section 3. The exemption created in s. 402.88(4), Florida Statutes, applies retroactively to such confidential and exempt information held by a law enforcement agency, a county emergency management agency, or a local fire department before, on, or after the effective date of this act.

Section 4. This act shall take effect on the same date that SB 1040 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1042
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senator Brodeur
SUBJECT:	Public Records/Special Persons Registry
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Fav/CS**
2.	Gerbrandt	Money	AHS	**Recommend: Fav/CS**
3.	Gerbrandt	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1042 creates an exemption from the public records requirements of section 119.07(1), Florida Statutes, and section 24(a), Art. I of the State Constitution for the following information relating to the enrollment of individuals on the Special Needs Registry (SNR) created by SB 1040:

- Records;
- Data;
- Information;
- Correspondence; and
- Communications.

The bill also applies the exemption to any locally maintained registry that is substantially similar to the SNR. The bill specifies that such information may not be disclosed except, upon request, to:

- A law enforcement agency;
- A county emergency management agency;
- A local fire department; or
- As otherwise specifically authorized by the bill.

The bill provides for an Open Government Sunset review and contains a statement of public necessity as required by the State Constitution.

The bill also applies the exemption retroactively to confidential and exempt information held by one of the agency entities listed above before the effective date of the act.

The bill is not expected to have a fiscal impact. See Section V. Fiscal Impact Statement.

The bill provides that the act shall take effect on the same date that SB 1040 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. SB 1040 has an effective date of March 1, 2023.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

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

Executive Agency Records – The Public Records Act

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

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

> All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of

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

> the 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]

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]

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[6] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[7] Section 119.07(1)(a), F.S.
[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[9] FLA. CONST. art. I, s. 24(c).
[10] *Id*. *See, e.g.*, *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).
[11] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[12] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[13] *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).
[14] *Id*.
[15] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

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 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

[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.
[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.

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]

Autism

Autism is a pervasive, neurologically-based developmental disability of extended duration that has onset during infancy or childhood, which causes severe learning, communication, and behavioral disorders.[27] Autism spectrum disorder (ASD) includes autism, Asperger's syndrome, and any other pervasive developmental disorder.[28] The Centers for Disease Control and Prevention (CDC) estimates that approximately one in 44 children has ASD.[29] The CDC also estimates that over 5.4 million adults have ASD.[30]

Interactions with Law Enforcement for Individuals with Autism

A person's developmental disability may make interactions with law enforcement more challenging. For example, identifying a person with an ASD can be confusing to any person unfamiliar with the condition, including law enforcement. Law enforcement can mistake the signs of autism with behaviors typically associated with those of criminals.[31] Common attributes of autism are communication differences and behaviors or thinking that are repetitive or restricted to an area of interest. These traits could be interpreted by law enforcement as not being compliant with questioning or direct instructions. A characteristic of ASD known as escalation poses a particular problem in encounters with law enforcement.[32] Escalation describes the response of a person with ASD under stress or in an unfamiliar situation.[33] Overwhelmed by the barrage of sensory information, a person with ASD may attempt to flee the uncomfortable situation, become combative, or simply shut down.[34] The individual may cover his or her ears and shriek, not knowing how or where to get help.[35] The presence of police lights and sirens, uniforms, loud and unfamiliar voices, or barking dogs often makes a difficult situation worse by contributing to the individual's sensory overload.[36]

Alzheimer's Disease

Alzheimer's disease is a form of dementia, a general term for memory loss. It is a progressive brain disorder that damages and eventually destroys brain cells, leading to memory loss and

[26] Section 119.15(7), F.S.
[27] Section 393.063(5), F.S.
[28] Section 627.6686(2)(b), F.S.
[29] The Centers for Disease Control and Prevention (The CDC), *Data & Statistics on Autism Spectrum Disorder*, available at https://www.cdc.gov/ncbddd/autism/data.html (last visited February 3, 2022).
[30] The CDC, *Key Findings: CDC Releases First Estimates of the Number of Adults Living with Autism Spectrum Disorder in the United States***,** available at https://www.cdc.gov/ncbddd/autism/features/adults-living-with-autism-spectrum-disorder.html (last visited February 3, 2022).
[31] Randy Lambert *"How Changing the Wes Kleinert Fair Interview Act and Establishing Law Enforcement Academy Training Standards Will Help the Autism Community,"* Child and Family Law Journal, p. 48 (2018), available at https://lawpublications.barry.edu/cflj/vol6/iss1/3 (last visited February 3, 2022).
[32] Bernard J. Farber, *Police Interaction With Autistic Persons: The Need For Training*, Aele Monthly Law Journal, p. 106 (2009), available at https://www.aele.org/law/2009all07/2009-07MLJ101.pdf (last visited February 3, 2022).
[33] *Id*.
[34] *Id*.
[35] *Id*.
[36] *Id*.

changes in the functions of the brain. In the early stages of Alzheimer's disease, memory loss is mild; in late-stages, individuals lose the ability to carry on a conversation and respond to their environment. Currently, the disease has no cure, but treatment can temporarily slow the worsening of symptoms.[37]

Florida has an increasing number of individuals with Alzheimer's disease. An estimated 580,000 Floridians have Alzheimer's disease.[38] The projected number of Floridians with Alzheimer's disease is estimated to increase by 24% to 720,000 individuals by 2025.[39]

Interactions with Law Enforcement for Individuals with Alzheimer's and Dementia

Many behaviors associated with Alzheimer's disease and dementia tend to increase a person's chance of interacting with law enforcement. Because these individuals are often unable to explain their unusual behavior, their actions are more easily misunderstood.[40] Common instances that can cause someone with Alzheimer's disease to interact with law enforcement include wandering, auto accidents, erratic driving, accidental breaking and entering due to confusion, and unintentional shoplifting.[41]

Voluntary Registry Systems

Law enforcement agencies nationwide have begun utilizing voluntary registry systems that provide officers with relevant information on individuals with special needs, including those with Alzheimer's disease.[42] Law enforcement agencies have found that such registries can:

- Promote community safety;
- Improve officer safety;
- Increase the speed and efficiency in which officers are able to respond, decreasing department liability;
- Reduce strain on department resources (human and financial) during emergencies;
- Give community members peace of mind; and
- Promote community partnerships in responding to special needs community members.[43]

Voluntary registry systems allow law enforcement to obtain information that assists in response to calls for service involving individuals with conditions such as Alzheimer's disease.[44]

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[38] The Department of Elder Affairs, *2021 Alzheimer's Disease Advisory Committee Annual Report*, p. 4, available at https://elderaffairs.org/wp-content/uploads/ADAC-Report-2021_FINAL.pdf (last visited February 3, 2022).
[39] *Id*.
[40] Alzheimer's Association, *Alzheimer's Disease Guide for Law Enforcement*, available at https://www.alz.org/national/documents/safereturn_lawenforcement.pdf (last visited February 3, 2022).
[41] *Id*.
[42] The International Association of Chiefs of Police (IACP), *A Guide to Law Enforcement on Voluntary Registry Programs for Vulnerable Populations*, p. 2, available at https://www.theiacp.org/sites/default/files/Alz%20Voluntary%20Registry_0.pdf (last visited February 3, 2022) (hereinafter cited as "The IACP Guide").
[43] *Id*.
[44] *Id*.

Voluntary registry systems have also proven helpful in responding to individuals in other special needs populations. Departments utilize the system for community members living with ASD, developmental disabilities, attention deficit/ hyperactivity disorder (ADHD), epilepsy, brain injury, mental illness, and other disabilities that may affect the way individuals interact and respond to law enforcement officers and other first responders.[45]

Confidentiality of Information

Voluntary registry systems generally contain large amounts of personal and sensitive information. Confidentiality concerns, coupled with a general fear of law enforcement prevalent in some communities, could hinder community willingness to participate in voluntary registry programs.[46] Some community members may be hesitant to participate due to fear exploitation of registry data.[47] Others fear that registry information collected may be used to violate the rights of special needs individuals by inappropriately releasing the information to outside parties and entities.[48]

Some agencies utilizing voluntary registry systems use disclaimers, waivers, or releases on voluntary registry systems' registration forms or questionnaires to notify registrants that providing data is voluntary and to ensure that registrants and their caregivers know that information will be used solely for the purpose of assisting first responders in providing service.[49] Other individuals have also expressed concerns regarding Health Insurance Portability and Accountability Act (HIPAA) compliance of registry information collection and storage.[50]

III. Effect of Proposed Changes:

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- Records;
- Data;
- Information;
- Correspondence; and
- Communications.

The bill also applies the exemption to any locally maintained registry that is substantially similar to the SNR. The bill specifies that such information may not be disclosed except, upon request, to:

- A law enforcement agency;
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- A local fire department.

[45] *Id*. at 3.
[46] The IACP Guide at 21.
[47] *Id*.
[48] *Id*.
[49] *Id*.
[50] *Id*.

Any of the above-listed agency entities are permitted to disclose information otherwise deemed confidential and exempt by the bill to others not specifically listed only under the following circumstances:

- With the express written consent of the registry enrollee or the legally authorized representative of such enrollee;
- In a medical emergency;
- By court order upon a finding of good cause;
- To another governmental agency when needed for the performance of its duties and responsibilities; or
- In the interest of public safety, to;
  - Assist in locating the enrollee; or
  - Promote the safety or well-being of the enrollee, as determined by the law enforcement agency.

The bill includes a public necessity statement, specifying the need to make all records, data, information, correspondence, and communications relating the enrollment of persons in the SNR confidential and exempt from Florida's public records laws. The bill provides that such records are likely to include confidential medical information and sensitive personal information of individuals on the SNR. The bill states that the potential disclosure of such information will deter enrollment, thereby depriving law enforcement of information which would enable them to interact with those eligible for enrollment in safe and appropriate ways.

The bill is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2027, unless reviewed and saved from repeal by the Legislature.

The bill also applies the exemption retroactively to confidential and exempt information held by one of the agency entities listed above before the effective date of the act.

The bill provides that the act shall take effect on the same date that SB 1040 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

SB 1040 has an effective date of March 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for records, data, information, correspondence, and communication relating to the enrollment of individuals on the SNR. 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 sensitive personal information, and confidential medical information, of individuals enrolled in the SNR. This bill exempts only such 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.

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:

The bill does not appear to give the APD the option or ability to request information from any other agencies who have information as contemplated in SB 1040.[51]

VIII. Statutes Affected:

This bill substantially amends section 402.88 of the Florida Statutes, if created by SB 1040.

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 Children, Families, and Elder Affairs on February 8, 2022:
The Committee Substitute:

- Changes references to the voluntary registry from "Registry of Persons with Special Needs" to the "Special Needs Registry".

B. Amendments:

None.

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

[51] The APD, *Agency Analysis of HB 735*, p. 2. (on file with the Senate Children, Families, and Elder Affairs Committee).

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

586-02804-22 20221042c1

A bill to be entitled

An act relating to public records; amending s. 402.88, F.S.; providing an exemption from public records requirements for all records, data, information, correspondence, and communications relating to the enrollment of persons in the Special Persons Registry maintained by the Department of Health; providing exceptions; authorizing law enforcement agencies, county emergency management agencies, and local fire departments to further disclose confidential and exempt information under certain circumstances; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing for retroactive application; providing a contingent effective date.

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

Section 1. Subsection (3) is added to section 402.88, Florida Statutes, as created by SB 1040 or similar legislation, to read:

402.88 Special Persons Registry for interactions with law enforcement; public records exemption.—

(3)(a) All records, data, information, correspondence, and communications relating to the enrollment of persons as provided in subsection (1) and such information included in any locally maintained registry that is substantially similar to the registry in subsection (1) are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may

586-02804-22 20221042c1

not be disclosed except, upon request, to a law enforcement agency, a county emergency management agency, or a local fire department, or as otherwise specifically authorized by this section.

(b) A law enforcement agency, county emergency management agency, or local fire department in possession of materials described in paragraph (a) may further disclose information contained in such materials to others not specifically listed only as follows:

1. With the express written consent of the registry enrollee or the legally authorized representative of such enrollee;

2. In a medical emergency;

3. By court order upon a finding of good cause;

4. To another governmental agency in the performance of its duties and responsibilities; or

5. In the interest of public safety, to assist in locating the enrollee, or to promote the safety or well-being of the enrollee, as determined by the law enforcement agency.

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

Section 2. The Legislature finds that it is a public necessity to make all records, data, information, correspondence, and communications relating to the enrollment of persons in the Special Persons Registry under s. 402.88, Florida Statutes, confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

Such records would likely include confidential medical information and sensitive personal information about the persons listed in the registry. The potential disclosure of such information would deter persons from being enrolled in the registry, which would then deprive law enforcement officers of information that would better enable them to interact with such persons in safe and appropriate ways.

Section 3. The exemption created in s. 402.88(3), Florida Statutes, applies retroactively to such confidential and exempt information held by a law enforcement agency, a county emergency management agency, or a local fire department before the effective date of this act.

Section 4. This act shall take effect on the same date that SB 1040 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 Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 22, 2022

I respectfully request that **Senate Bill 1040 & Senate Bill 1042**, relating to **Registry of Persons with Special Needs & Public Records/Registry of Persons with Special Needs,** 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

The Florida Senate

APPEARANCE RECORD

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

2/28/22
Meeting Date

Approps
Committee

1042
Bill Number or Topic

Amendment Barcode (if applicable)

Name Olivia Babis

Phone 850-617-9718

Address 2473 Care Dr. 200
Street

Email oliviab@drflorida.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: Disability Rights 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)

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

2/28/2022
Meeting Date

SB 1042
Bill Number or Topic

Appropriations
Committee

Amendment Barcode (if applicable)

Name Nancy Lawther, Ph.D.

Phone 407 855-7604

Address 1747 Orlando Central Pkwy
Street

Email legislation@flpta.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)

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 Appropriations

BILL:	CS/CS/CS/SB 1078
INTRODUCER:	Appropriations Committee; Ethics and Elections Committee; Environment and Natural Resources Committee; and Senator Hutson
SUBJECT:	Soil and Water Conservation Districts
DATE:	March 2, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carroll	Rogers	EN	**Fav/CS**
2.	Rey	Roberts	EE	**Fav/CS**
3.	Reagan	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1078 provides that new soil and water conservation districts (SWCDs) whose district boundaries are wholly located in one county must be subdivided into five numbered subdivisions that match, as practicable, the boundaries of either the five county commission districts or five school board districts within the county. If neither the county commission nor the school board is subdivided into five districts or the SWCD is comprised of multiple counties, the Department of Agriculture and Consumer Services shall subdivide the SWCD into five numbered subdivisions as nearly equal in area as practicable.

The bill allows one SWCD supervisor to be elected from each of the five numbered subdivisions, and provides for staggered terms for supervisors.

The bill requires SWCD supervisors to be eligible voters who reside within the numbered subdivision from which they are elected and be actively engaged or retired after ten years of being engaged in, agriculture as defined by section 570.02, Florida Statutes; or be employed by an agricultural producer; or own, lease, or actively be employed on land classified as agricultural under section 193.461, Florida Statutes, which makes an annual gross revenue of more than $500,000. Candidates will be required to file a statement affirming they meet the qualifications to serve as a supervisor. If a subdivision does not have a qualified candidate one week before the qualifying period, any eligible candidate within a district may seek to be elected in that subdivision.

The bill provides that each supervisor shall be elected at the 2022 general election. The bill provides that by January 1, 2023, an SWCD in existence on July 1, 2022, which was not initially subdivided, must be subdivided in the manner provided by the bill.

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

II. Present Situation:

Special Districts

A special district is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.[1] Special districts are created by general law, special act, local ordinance, or by rule of the governor and cabinet.[2] A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter.[3] Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.[4] Special districts are funded through the imposition of ad valorem taxes, fees, or charges on the users of those services as authorized by law.[5]

A dependent special district is a special district where:
- The membership of the governing body is identical to the governing body of a single county or municipality,
- All members of the governing body are appointed by the governing body of a single county or municipality,
- Members of the district's governing body are removable at will by the governing body of a single county or municipality, or
- The district's budget is subject to the approval of the governing body of a single county or municipality.[6]

An independent special district is any district that is not a dependent special district.[7]

According to the Department of Economic Opportunity's (DEO's) Special District Accountability Program Official List of Special Districts, as of January 18, 2022, the state had 1,835 special districts.[8] There were 1,217 independent special districts and 618 dependent

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[1] Florida Assoc. of Special Districts, *What Districts Do*, https://fasd.com/what-districts-do/ (last visited Jan. 17, 2022).
[2] *See* ss. 189.031(3), 189.02(1), and 190.005(1), F.S. *See, generally*, s. 189.012(6), F.S.
[3] *2020 – 2022 Local Gov't Formation Manual*, 64, *available at* https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3117&Session=2021&DocumentType=General+Publications&FileName=2021-2022+Local+Government+Formation+Manual.pdf (last visited Jan. 17, 2022).
[4] *Id.*
[5] *Id.* at 70-73.
[6] Section 189.012(2), F.S.
[7] Section 189.012(3), F.S.
[8] DEO, Special District Accountability Program, *Official List of Special Districts*, specialdistrictreports.floridajobs.org/webreports/StateTotals.aspx (last visited Jan. 18, 2022).

districts.[9] Special districts are governed generally by the Uniform Special District Accountability Act (act).[10] The act centralizes provisions governing special districts and applies to the formation,[11] governance,[12] administration,[13] supervision,[14] merger,[15] and dissolution[16] of special districts, unless otherwise expressly provided in law.[17]

Soil and Water Conservation Districts

There are 56 active soil and water conservation districts (SWCDs).[18] All SWCDs are created by the Department of Agriculture and Consumer Services (DACS) upon petition by landowners in the proposed district.[19] The DACS must provide for an annual audit of the accounts of receipts and disbursements for each district.[20]

SWCDs' stated purpose is to provide assistance, guidance, and education to landowners, land occupiers, the agricultural industry, and the general public in implementing land and water resource protection practices.[21] In order to do this, the SWCDs partner with a variety of entities, including the DACS and its Office of Agricultural Policy, the U.S. Department of Agriculture, the Natural Resources Conservation Service, the National Association of Conservation Districts, the Association of Florida Conservation Districts, the Florida Conservation District Employees Association, the University of Florida's Institute of Food and Agricultural Sciences, the Florida Department of Environmental Protection (DEP), the water management districts, the Florida Farm Bureau, the DEO, and counties.[22]

The authority of the SWCDs overlaps significantly with other land and water resource management agencies, such as the DEP,[23] the DEO,[24] and the water management districts.[25] Due to this jurisdictional overlap, the SWCDs today primarily focus on working with private and public landowners to provide technical and financial assistance for conservation, execute lease agreements, and manage publicly owned land.[26] Some other activities of the SWCDs include:

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[9] *Id.*
[10] Section 189.01, F.S., *but see* ch. 190, F.S. (community development districts), ch. 191, F.S. (independent special fire control districts), ch. 298, F.S. (water control districts), ch. 388, F.S. (mosquito control districts), and ch. 582, F.S. (soil and water conservation districts).
[11] *See* ss. 189.02 (creation of dependent special districts) and 189.031, F.S. (creation of independent special districts).
[12] *See* s. 189.0311, F.S. (charter requirements for independent special districts).
[13] *See* s. 189.019, F.S. (requiring codification of charters incorporating all special acts for the district).
[14] *See* s. 189.0651, F.S. (oversight for special districts created by special act of the Legislature).
[15] Sections 189.071 and 189.074, F.S.
[16] Sections 189.071 and 189.072, F.S.
[17] *See, e.g.,* s. 190.004, F.S. (Ch. 190, F.S. as "sole authorization" for creation of community development districts).
[18] DEO, Special District Accountability Program, *Official List of Special Districts*, http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx (last visited Jan. 17, 2022).
[19] Sections 582.10-582.15, F.S.
[20] Section 582.055(3), F.S.
[21] Section 582.02(4), F.S.
[22] DACS, Soil and Water Conservation District Supervisor Handbook, 17-20, *available at* https://www.fdacs.gov/content/download/96781/file/florida-soil-and-water-conservation-district-supervisor-handbook.pdf (last visited Jan. 17, 2022).
[23] *See, e.g.,* ch. 408, F.S.
[24] See, e.g., ch. 380, F.S.
[25] *See, e.g.,* ch. 373, F.S.
[26] DACS, *Soil and Water Conservation District Supervisor Handbook* at 4.

- Cooperative programs like best management practices projects and Farm Bill programs like the Environmental Quality Incentives Program, the Conservation Security Program, the Agricultural Conservation Easement Program, and Regional Conservation Partnership Programs;
- Conservation projects focusing on water quality improvement, habitat restoration, and administering cost-share funds to help farmers and other landowners implement conservation practices;
- Demonstration projects focusing on irrigation, drainage, tailwater recovery, erosion control, and waste management;
- Educational Workshops on topics like water quality and quantity, pesticide and fertilizer management, watershed engineering, wetlands, soil characteristics, soil tillage techniques, plan identification, invasive plant control, farm ponds, and agricultural production;
- Mobile Irrigation Labs to evaluate agricultural irrigation systems; and
- Planning and rulemaking at the county, regional, state, and federal levels.[27]

Soil and Water Conservation District Supervisors

Supervisors are members of the governing bodies of the SWCDs.[28] An SWCD supervisor election is held every two years at the same time as the general election.[29] In the case of a newly created SWCD participating in a regular election for the first time, three groups of candidates are elected for terms of four years, and two groups are elected for initial terms of two years.[30]

III. Effect of Proposed Changes:

Section 1 amends s. 582.15, F.S., to provide that new soil and water conservation districts (SWCDs) that are wholly located within one county must be subdivided into five numbered subdivisions that match, as practicable, the boundaries of either the five county commission districts or five school board districts within the county. If neither the county commission nor the school board is subdivided into five districts or the SWCD is comprised of multiple counties, the DACS shall subdivide the district into five numbered subdivisions as nearly equal in area as practicable to ensure geographical representation within the SWCD's governing body.

Section 2 amends s. 582.18, F.S., to allow one SWCD supervisor to be elected from each of the five numbered subdivisions created by the DACS. The bill provides that, in the case of the first regular election for a new SWCD, candidates shall be elected from district subdivisions 1, 3, and 5 for terms of four years and candidates shall be elected from district subdivisions 2 and 4 for initial terms of two years.

Section 3 amends s. 582.19, F.S., to require the SWCD supervisors to be eligible voters who reside within the numbered subdivision from which they are elected and be actively engaged or retired after 10 years of being engaged in, agriculture as defined by s. 570.02, F.S.; be employed by an agricultural producer; or own, lease, or actively be employed on land classified as agricultural under section 193.461, Florida Statutes, which makes an annual gross revenue of

[27] *Id.* at 5.
[28] Section 582.01, F.S.
[29] Section 582.18, F.S.
[30] *Id.*

more than $500,000. Candidates will be required to file a statement affirming they meet the qualifications to serve as a supervisor. If a subdivision does not have a qualified candidate one week before the qualifying period, any eligible candidate within a district may seek to be elected in that subdivision.

Section 4 provides that supervisors of the SWCDs must seek to be elected in the 2022 general election. The bill provides that by January 1, 2023, a district in existence on July 1, 2022, which was not subdivided in its initial creation, must be subdivided into five numbered subdivisions that match, as practicable, the boundaries of either the five county commission districts or five school board districts in the county. If neither the county commission nor the school board is subdivided into five districts, the DACS shall subdivide the district into five numbered subdivisions as nearly equal in area as practicable.

The bill adds that the following procedures apply to the election of supervisors of the SWCDs subdivided by the DACS pursuant to the above paragraph:

- SWCD governing body seats 1, 3, and 5, which have terms that initially expired in January 2025 or 2027, as applicable, shall represent district subdivisions 1, 3, and 5, respectively. Such seats shall be filled for a four-year term.
- SWCD governing body seats 2 and 4, which have terms that initially expired in January 2025 or 2027, as applicable, shall represent district subdivisions 2 and 4, respectively. Such seats shall be filled for a two-year term to achieve staggered terms; thereafter the seats shall be filled for four-year terms.

Section 5 provides that the bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 582.15, 582.18, and 582.19.

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 Appropriations on February 28, 2022:
The committee substitute:

- Provides that if the SWCD boundaries are not wholly located in one county the district will be divided into five districts as determined by DACS.
- Reduces the number of years a person must have been actively engaged in agriculture to qualify for a supervisor position from 15 to 10.
- Adds that a person may qualify for a supervisor position if they own, lease, or actively are employed on land classified as agricultural, which makes an annual profit of more than $500,000.
- Provides that if a person owns, leases, or is actively employed on land classified as agricultural, they may be eligible to be a supervisor if the land makes an annual gross revenue, rather than an annual profit, of more than $500,000.

CS/CS by Ethics and Elections on February 8, 2022:
The committee substitute:

- Clarifies that candidates for supervisor of Soil and Water Conservation Districts must be eligible voters of the subdivision they will be elected from, and actively engaged

in, or retired after 15 years being engaged in, agriculture per s. 570.02, F.S., or employed by agricultural producer.
- Provides that if a subdivision does not have a qualified candidate one week before the qualifying period, any qualified candidate in the district can seek to be elected in that subdivision.
- Requires candidates for supervisors to submit a statement affirming they meet the requirements per statute.
- Requires all supervisors to seek election in the 2022 general election.

CS by Environment and Natural Resources on January 24, 2022:
The committee substitute:
- Provides that new soil and water conservation districts (SWCD) must be subdivided into five numbered subdivisions that match, as practicable, the boundaries of either the five county commission districts or five school board districts within the county. If neither the county commission nor the school board is subdivided into five districts, the Department of Agriculture and Consumer Services shall subdivide the SWCD into five numbered subdivisions as nearly equal in area as practicable to ensure geographical representation within the SWCD's governing body.
- Allows one SWCD supervisor to be elected from each of the five numbered subdivisions.
- Provides for staggered terms for SWCD supervisors.
- Requires SWCD supervisors to be eligible voters who reside within the numbered subdivision from which they are elected and to be actively engaged in the business of farming or animal husbandry.
- Provides that the term of a supervisor serving on an SWCD governing body at the time the amended bill becomes a law expires on January 10, 2023.
- Provides that by January 1, 2023, an SWCD in existence on July 1, 2022, which was not subdivided in its initial creation, must be subdivided into five numbered subdivisions in the manner previously stated and provides for staggered terms of the SWCD supervisors.

B. Amendments:

None.

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

785588

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2022	.	
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	.	

The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment

Delete lines 93 - 95
and insert:
2. Be actively engaged in, or retired after 10 years of being engaged in, agriculture as defined in s. 570.02; be employed by an agricultural producer; or own, lease, or actively be employed on land classified as agricultural under s. 193.461 which makes an annual profit of more than $500,000.


465108

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2022	.	
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	.	

The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment to Amendment (785588)

Delete line 9
and insert:
which has an annual gross revenue of more than $500,000.

359308

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2022	.	
	.	
	.	
	.	

The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment

Delete lines 128 - 133
and insert:
to chapter 582, Florida Statutes, and whose district boundaries are wholly located in one county must be subdivided into five numbered subdivisions that match, as practicable, the boundaries of either the five county commission districts or five school board districts in the county. When neither the county commission nor the school board is subdivided into five

359308

districts, or when the district is comprised of multiple counties, the Department of Agriculture and Consumer Services

520516

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2022	.	
	.	
	.	
	.	

The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment

Delete lines 37 - 42
and insert:
administratively practicable and feasible and that the district boundaries are wholly located in one county, the district must be subdivided into five numbered subdivisions that match, as practicable, the boundaries of either the five county commission districts or five school board districts within the county. When neither the county commission nor the school board is subdivided

520516

into five districts, or when the district is comprised of multiple counties, the department shall subdivide the district

By the Committees on Ethics and Elections; and Environment and Natural Resources; and Senator Hutson

582-02834-22 20221078c2

A bill to be entitled

An act relating to soil and water conservation districts; amending s. 582.15, F.S.; providing for the subdivision of certain proposed soil and water conservation districts; requiring the Department of Agriculture and Consumer Services to subdivide certain proposed soil and water conservation districts; amending s. 582.18, F.S.; requiring the supervisors of each soil and water conservation district to be elected from each of the district's subdivisions; providing for the initial terms of office of candidates elected in each district subdivision; amending s. 582.19, F.S.; providing qualification requirements for supervisors to serve on the governing body of a soil and water conservation district; requiring candidates to submit a specified affirmation at the time of qualifying; requiring all supervisors of soil and water conservation district governing bodies to be elected at the 2022 general election; specifying that subsequent elections will be held according to certain provisions; providing for the subdivision of certain soil and water conservation districts by a specified date; requiring the department to subdivide certain soil and water conservation districts by a specified date; providing transitional provisions regarding the implementation of newly subdivided districts and the election of supervisors; providing an effective date.

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

582-02834-22 20221078c2

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

Section 1. Subsection (4) is added to section 582.15, Florida Statutes, to read:

582.15 Organization of district, etc.—

(4) After the Department of Agriculture and Consumer Services has determined that operation of a proposed district is administratively practicable and feasible, the district shall be subdivided into five numbered subdivisions that match, as practicable, the boundaries of either the five county commission districts or five school board districts within the county. When neither the county commission nor the school board is subdivided into five districts, the department shall subdivide the district into five numbered subdivisions as nearly equal in area as practicable to ensure geographical representation within that soil and water conservation district's governing body.

Section 2. Subsection (1) of section 582.18, Florida Statutes, is amended to read:

582.18 Election of supervisors of each district.—

(1) The election of supervisors for each soil and water conservation district shall be held every 2 years, with one supervisor elected from each of the five numbered subdivisions created by the department pursuant to s. 582.15(4). The elections shall be held at the time of the general election provided for by s. 100.041. The office of the supervisor of a soil and water conservation district is a nonpartisan office, and candidates for such office are prohibited from campaigning or qualifying for election based on party affiliation.

(a) Each candidate for supervisor for such district must

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

~~shall~~ qualify as directed by chapter 99.

(b) Each nominee who collects or expends campaign contributions shall conduct her or his campaign for supervisor of a soil and water conservation district in accordance with the provisions of chapter 106. Candidates who neither receive contributions nor make expenditures, other than expenditures for verification of signatures on petitions, are exempt from the provisions of chapter 106 requiring establishment of bank accounts and appointment of a campaign treasurer, but shall file periodic reports as required by s. 106.07.

(c) The names of all nominees on behalf of whom such nominating petitions have been filed shall appear upon ballots in accordance with the general election laws. All qualified electors residing within the district shall be eligible to vote in such election. The candidates who receive the largest number of the votes cast from each group of candidates in such election shall be the elected supervisors from such group for such district. In the case of a newly created district participating in a regular election for the first time, ~~three groups of~~ candidates shall be elected from district subdivisions 1, 3, and 5 for terms of 4 years, and candidates ~~two groups~~ shall be elected from district subdivisions 2 and 4 for initial terms of 2 years. Each candidate elected shall assume office on the first Tuesday after the first Monday in January following the election.

Section 3. Subsection (1) of section 582.19, Florida Statutes, is amended to read:

582.19 Qualifications and tenure of supervisors.—

(1) The governing body of the district shall consist of

five supervisors, elected as provided in s. 582.18 ~~hereinabove~~.

(a) To qualify to serve on the governing body of a district, a supervisor must:

1. Be an eligible voter who resides within the numbered subdivision from which she or he is elected; and

2. Be actively engaged in, or retired after 15 years of being engaged in, agriculture as defined in s. 570.02 or be employed by an agricultural producer.

(b) If, 1 week before the qualifying period, a district subdivision does not have a candidate who meets the qualification requirements of subparagraph (a)1., any eligible voter who resides in the district and who meets the qualification requirements of subparagraph (a)2. may seek to be elected in that district subdivision.

(c) At the time of qualifying, a candidate for supervisor shall submit an affirmation in substantially the following form:

State of Florida
County of ....

Statement of Candidate for Supervisor of Soil and Water Conservation District

I, ...(Name of candidate)..., a candidate for Supervisor of Soil and Water Conservation District, meet the qualifications pursuant to s. 582.19(1), Florida Statutes, to serve on the governing body of the Soil and Water Conservation District.

...(Signature of candidate)...

...(Address)...

Sworn to and subscribed before me this .... day of ....., ...(year)...., at .... County, Florida.

Section 4. (1) Each supervisor for a soil and water conservation district governing body shall be elected at the 2022 general election. After the 2022 general election, candidates shall be elected pursuant to s. 582.18(1)(c), Florida Statutes, as amended by this act, and subsection (3).

(2) By January 1, 2023, a district in existence on July 1, 2022, which was not subdivided in its initial creation pursuant to chapter 582, Florida Statutes, must be subdivided into five numbered subdivisions that match, as practicable, the boundaries of either the five county commission districts or five school board districts in the county. When neither the county commission nor the school board is subdivided into five districts, the Department of Agriculture and Consumer Services shall subdivide the district into five numbered subdivisions as nearly equal in area as practicable to ensure geographical representation within that soil and water conservation district's governing body.

(3) The following procedures apply to the election of supervisors of soil and water conservation districts subdivided by the department pursuant to subsection (2):

(a) District governing body seats 1, 3, and 5, which have terms that initially expired in January 2025 or 2027, as applicable depending on the year in which the district was formed, shall represent district subdivisions 1, 3, and 5, respectively. Such seats shall be filled for a term of 4 years.

(b) District governing body seats 2 and 4, which have terms that initially expired in January 2025 or 2027, as applicable depending on the year in which the district was formed, shall represent district subdivisions 2 and 4, respectively. Such seats shall initially be filled for a term of 2 years in order to achieve staggered terms; thereafter, any such seats shall be filled for a term of 4 years as provided under s. 582.19, Florida Statutes.

Section 5. This act shall take effect upon becoming a law.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 15, 2022

I respectfully request that **Senate Bill #1078**, relating to Soil and Water Conservation Districts, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Travis Hutson
Florida Senate, District 7

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

2-28-2022
Meeting Date

1078
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Colleen Stenstream

Phone 352-425-0419

Address 8180 SE 7th Phonne Rd.
Street

Email tuckedawayfarm@yahoo.com

Ocala FL. 34480
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☑ 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

2-28-22
Meeting Date

Appropriations
Committee

1078
Bill Number or Topic

Amendment Barcode (if applicable)

Name Audrey Kuipers

Phone 863.763.3619

Address 452 US Hwy 98 N
Street

Email Audrey.Kuipers@okeechobeeswcd.org

Okeechobee FL 34972
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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February 28, 2022
Meeting Date

Appropriations
Committee

SB 1078
Bill Number or Topic

Amendment Barcode (if applicable)

Name Betty Jo Tompkins

Phone 813.477.8332

Address 201 South Collins Street, Ste 202
Street

Email

Plant City, FL 33563
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: HSWCD

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

Feb 28, 2022
Meeting Date

SB 1078
Bill Number or Topic

Appropriations
Committee

Amendment Barcode (if applicable)

Name (Christopher Pettit

Phone 850 617 1704

Address 407 S. Calhoun
Street

Email christopher.pettit@fdacs.gov

Tallahassee 32399
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

February 28, 2022
Meeting Date

Senate Appropriations
Committee

1078 (adverse water quality impacts)
Bill Number or Topic

Amendment Barcode (if applicable)

Name Susan Aertker for League of Women Voters-Florida

Phone 904-262-5124

Address (Susan Aertker) 10178 Foxcroft Rd W
Street

Email susaninflorida@gmail.com

Jacksonville FI 32257
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: League of Women Voters-Florida

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/28/2022
Meeting Date

Approps
Committee

1078
Bill Number or Topic

Amendment Barcode (if applicable)

Name Karen Woodall

Phone 850-321-9386

Address 579 E. Call St.
Street

Email fcfap@yahoo.com

Tallahassee, FL 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Earth Justice

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/28/22
Meeting Date

1078
Bill Number or Topic

approp.
Committee

Amendment Barcode (if applicable)

Name Lindsay Cross

Phone

Address 1700 N monroe
Street

Email lindsay@fcvoters.org

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:
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)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

2/28/2022
Meeting Date

Appropriations
Committee

1078
Bill Number or Topic

Amendment Barcode (if applicable)

Name Buck M. Carpenter

Phone 850-673-8388

Address 3377 NE SR 6
Street

Email

City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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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 Appropriations

BILL:	PCS/CS/SB 1292 (895176)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Banking and Insurance Committee; and Senators Gruters and Bradley
SUBJECT:	Fraud Prevention
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	**Fav/CS**
2.	Sanders	Betta	AEG	**Recommend: Fav/CS**
3.	Sanders	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1292 modifies provisions in several areas related to the prevention of various forms of fraud. The bill:

- Requires the electronic credentialing system administered by the Department of Highway Safety and Motor Vehicles (DHSMV) to display driver vehicle registration and insurance information, provide the driver notice of any lapse in insurance coverage, and allow the driver to use the system to update policy information;
- Requires the DHSMV to provide recommendations on the means by which the DHSMV, law enforcement agencies, and other entities authorized by the DHSMV may electronically verify a driver's compliance with chapter 324, Florida Statutes, the Financial Responsibility Law of 1955;
- Requires a seller of any service contract with an automatic renewal provision to allow a consumer to cancel the contract in the same manner, and by the same means, as the contract was executed;
- Subjects a public adjuster, public adjuster apprentice, or other person not otherwise exempt from licensure as a public adjuster, to a fine not to exceed $20,000 per act for a violation of prohibited acts under section 626.854, Florida Statutes, during a state of emergency;
- Authorizes the Department of Financial Services (DFS) to impose a $2,000 per day administrative fine on an insurer that fails or refuses to comply with section 633.126, Florida

Statutes, related to fraudulent insurance claims and crimes with respect to a fire and explosion;
- Authorizes the DFS Division of Investigative and Forensic Services (DIFS) to adopt rules to administer section 633.126, Florida Statutes, related to fraudulent insurance claims and crimes with respect to a fire and explosion;
- Requires a motor vehicle service agreement company's written advertisement to fully disclose in at least 12-point, boldface font, the name, address, and Florida Company Code of the motor vehicle service agreement company;
- Requires a motor vehicle service agreement company's radio or television advertisement to fully disclose the full legal name of the licensed salesperson or the motor vehicle agreement company;
- Requires a motor vehicle service agreement company's telephone solicitation fully identify the soliciting licensed salesperson's full legal name and license number at the beginning of the telephone solicitation, and the salesperson's telephone number when the telephone solicitation ends;
- Clarifies a written advertisement does not include material prepared and presented to a consumer at the point of sale of the product to be covered by warranty or service agreement.
- Provides a technical change under section 775.15, Florida Statutes, related to time limitations for prosecuting criminal offenses, to allow separate prosecutions of workers' compensation fraud under section 440.105, Florida Statutes, and false and fraudulent insurance claims under section 817.234, Florida Statutes, within five years of a violation of either section; and
- Authorizes an insurer damaged as a result of insurance fraud to recover reasonable investigation and litigation expense, including attorney fees, at the trial and appellate court, if the insurer had reported the possible fraudulent insurance act to the DIFS and the possible fraudulent insurance act was criminally adjudicated as guilty.

The bill has an indeterminate, yet potentially negative impact on state revenues and expenditures. *See* **Section V. Fiscal Impact Statement** below.

The bill takes effect upon becoming a law, except as otherwise provided.

II. Present Situation:

Electronic Credentialing System

The 2021 Legislature[1] created the electronic credentialing system within the Department of Highway Safety and Motor Vehicles (DHSMV) for purposes of establishing a secure and uniform system for issuing an optional digital proof of driver license or identification card.[2] The electronic credentialing system may not retain internet protocol addresses, geolocation data, or other information that describes the location, computer, computer system, or computer network from which a customer accesses the system.[3]

[1] Chapter 2021-235, L.O.F.
[2] Section 322.032(2)(a), F.S.
[3] Section 322.032(2)(b), F.S.

Required Notification of New, Cancelled, Nonrenewed, and Lapsed Motor Vehicle Insurance Coverages

Section 324.0221, F.S., requires insurers to report new, cancelled, or nonrenewed personal injury protection or property damage insurance coverages to DHSMV within 10 days. Prior to notifying the DHSMV, the insurer must provide the named insured, or the first-named insured in the case of a commercial fleet policy, with written notice the cancellation or nonrenewal will be reported to the DHSMV. The notice must also inform the named insured that failure to maintain personal injury protection and property damage insurance coverages on a motor vehicle when required by law may result in the loss of registration and driving privileges in Florida and inform the named insured of the amount of any reinstatement fees.

Service Contracts with Automatic Renewal Provisions

Florida law governs the automatic renewal provisions of service contracts such that a service contract may automatically renew at the end of its term without any additional action required by either party under certain circumstances.

If the automatic renewal provision renews a service contract for more than one month and caused the service contract to be in effect for more than six months after the service contract was executed, the seller must clearly and conspicuously disclose the automatic renewal provision to the consumer. Renewal is effective unless the consumer does not give notice to the seller of intent to terminate the service contract.[4] However, in the case of a service contract with a term of 12 months that automatically renews for more than one month, the seller must provide written or electronic notification to consumers no more than 60 and no less than 30 days prior to the cancellation deadline pursuant to the automatic renewal provision.[5]

Violations of the disclosure and notice requirements void an automatic renewal provision, rendering it unenforceable,[6] unless the seller demonstrates:

- It has established and implemented written procedures to comply with, and enforce, the requirements as part of their routine business practice;
- The failure to comply was the result of error; and
- It has provided, as part of its routine business practice, a refund or credit for the unearned portion of the renewed contract, starting from the date the seller is notified of the error. [7]

State and federal financial institutions or any subsidiary or affiliate thereof, health studios,[8] licensed insurers, warranty associations,[9] health care service organizations[10] and programs,[11]

[4] Section 501.165(2)(a), F.S.
[5] Section 501.165(2)(b), F.S.
[6] Section 501.165(2)(e), F.S.
[7] Section 501.165(2)(b), F.S.
[8] Pursuant to s. 501.0125(1), F.S., any person who is engaged in the sale of services for instruction, training, or assistance in a program of physical exercise or in the sale of services for the right or privilege to use equipment or facilities in furtherance of a program of physical exercise. The term does not include an individual acting as a personal trainer.
[9] Chapter 634, F.S., includes motor vehicle service agreement companies, home warranty associations, and service warranty associations.
[10] Chapter 641, F.S., includes health maintenance organizations, prepaid health clinics, and health care services.
[11] Chapter 636, F.S., includes prepaid limited health service organizations and discount plan organizations.

electric utilities,[12] and private companies providing certain municipal services[13] are expressly exempt.

The Department of Financial Services

The Department of Financial Services (DFS) is statutorily responsible for:

- Carrying out the state's accounting and auditing functions, including preparing the state's Comprehensive Annual Financial Report; monitoring state contracts; and making payment for state expenditures;
- Implementing state fire prevention and control measures, including the investigation of arson and other suspicious fires; training and certification of firefighter candidates; and regulation of explosive storage and use;
- Operating the state's risk management program and securing insurance and reinsurance for covered state liabilities;
- Managing the state Treasury and directing safekeeping and the investment of all state funds;
- Managing the deferred compensation program for state employees;
- Investigating fraud, including insurance fraud, public assistance fraud, and false claims against the state;
- Regulating cemeteries and funeral homes;
- Licensing and oversight of insurance agents and agencies;
- Ensuring Florida employers provide workers' compensation coverage for their employees in a cost effective manner;
- Assisting consumers in the resolution of issues pertaining to insurance and funeral services; and
- Collecting and returning unclaimed property belonging to Florida residents.[14]

The DFS is composed of the following divisions and offices:

- Accounting and Auditing;
- Administration;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Insurance Consumer Advocate;
- Investigative and Forensic Services;
- Public Assistance Fraud;
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;
- Unclaimed Property; and

[12] Pursuant to s. 366.02(2), F.S., any municipal electric utility, investor-owner electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state.
[13] Pursuant to s. 180.05, F.S., any company or corporation duly authorized under the laws of the state to construct or operate water works systems, sewerage systems, sewage treatment works, garbage collection, and garbage disposal plants.
[14] The Florida Department of Financial Services (DFS), *Statement of Agency Organization and Operation*, https://www.myfloridacfo.com/sitePages/required/agencyorg.htm (last visited Jan. 10, 2022).

- Workers' Compensation.[15]

The DFS Division of Investigative and Forensic Services

The Division of Investigative and Forensic Services (DIFS) houses all law enforcement and forensic components residing within the DFS. The DIFS has broad authority to investigate a wide range of fraudulent and criminal acts within and outside the state including, but not limited to, insurance fraud; workers' compensation fraud investigations; fire, arson, and explosives investigations; and fire and explosive sample analysis.[16] The DIFS also refers any records tending to show criminal violations to state or federal law enforcement or prosecutorial agencies, and provides investigative to those agencies as required, when the DIFS believes that a criminal law of the state has been violated.[17]

The DFIS is composed of the following bureaus and offices:
- Forensic Services;
- Fire, Arson, and Explosives Investigations;
- Fiscal Integrity;
- Insurance Fraud; and
- Workers' Compensation Fraud.[18]

The DFS Division of State Fire Marshal

The Division of State Fire Marshal (State Fire Marshal) works to reduce the loss of life and property to fire and other disasters statewide through internal and external leadership, standards and training, and prevention and education. The State Fire Marshal has the expressed authority to enforce all laws and adopted rules related to:
- The prevention of fire and explosion through the regulation of conditions which could cause fire or explosion, the spread of fire, and panic resulting therefrom;
- Installation and maintenance of fire alarm systems and fire protection systems, including fire suppression systems, fire-extinguishing equipment, and fire sprinkler systems;
- Servicing, repairing, recharging, testing, marking, inspecting, installing, maintaining, and tagging of fire extinguishers, preengineered systems, and individually designed fire protection systems;
- The training and licensing of persons engaged in the business of servicing, repairing, recharging, testing, marking, inspecting, installing, maintaining, and tagging of fire extinguishers, preengineered systems, and individually designed fire protection systems;
- The maintenance of fire cause and loss records; and
- Suppression of arson and the investigation of the cause, origin, and circumstances of fire.[19]

The State Fire Marshal is composed of the Bureau of Fire Prevention and the Bureau of Fire Standards and Training.[20]

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[15] Section 20.121(2), F.S.
[16] *See* supra note 11.
[17] Section 20.121(2)(e), F.S.
[18] *Id*.
[19] Section 633.104(2), F.S.
[20] *See* supra note 11.

Authority of the DFS to Compel Production of Records Related to Insurance Fraud and Arson Investigations

Under s. 633.126, F.S., the State Fire Marshal and DIFS investigators may request any insurance company or its agent, adjuster, employee, or attorney, investigating a claim under an insurance policy or contract with respect to a fire or explosion to release any information whatsoever in the possession of the insurance company or its agent, adjuster, employee, or attorney relative to a loss from that fire or explosion. A person who willfully refuses to release any information requested by a State Fire Marshal or DISF investigator commits a first degree misdemeanor.[21]

Regulation of Insurance Adjusters

Florida law requires all insurance adjusters to be licensed by the DFS and appointed by the appropriate entity or person[22] in order to adjust claims. General requirements for licensure include submitting an application; paying required fees; satisfying pre-licensing examination requirements, when applicable; complying with requirements as to knowledge, experience, or instruction; and submitting fingerprints.[23]

Under s. 626.864, F.S., there are both public adjusters and all-lines adjuster license types, with all-lines appointments further divided into independent adjusters,[24] company employee adjusters,[25] and public adjuster apprentices.[26] The same adjuster may not be concurrently licensed as a public adjuster and an all-lines adjuster.[27] In the case of an all-lines adjuster, the adjuster may be appointed as an independent adjuster, company employee adjuster, or public adjuster apprentice, but not more than one concurrently.[28]

A public adjuster is any person, other than a licensed attorney, who, for compensation, prepares, completes, or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of an insured or third party.[29] Public adjusters operate independently and are not affiliated with any insurer.

An all-lines adjuster is any person who, for compensation, ascertains and determines the amount of any claim, loss, or damage payable under an insurance contract or settles such claim, loss, or damage on behalf of a public adjuster or insurer.[30]

[21] Section 633.126(9), F.S.
[22] *See* s. 626.015(4), F.S., defining "appointment" as the authority given by an insurer or employer to a licensee to adjust claims on behalf of an insurer or employer.
[23] Section 626.171, F.S.
[24] Section 626.855, F.S.
[25] Section 626.856, F.S.
[26] Section 626.8561, F.S.
[27] Section 626.864(2), F.S.
[28] Section 626.864(3), F.S.
[29] Section 626.854(1), F.S.
[30] Section 626.8548, F.S.

An independent adjuster is any person who is self-employed or employed by an independent adjusting firm and who works for an insurer to ascertain and determine the amount of an insurance claim, loss, or damage, or to settle an insurance claim under an insurance contract.[31]

A company employee adjuster is any person employed in-house by an insurer, or a wholly owned subsidiary of the insurer, who ascertains and determines the amount of an insurance claim, loss, or damage, or settles such claim, loss or damage.[32]

Discretion of the DFS to Act against Licensees

Section 626.621, F.S., grants the DFS discretion, under certain circumstances, to deny applications for, revoke, or refuse to renew, the licenses or appointments of agents, adjusters, customer representatives, service representatives, and managing general agents. Examples of circumstances that can lead to such agency action include violation of the Florida Insurance Code, violation of lawful orders or rules of the DFS, and engaging in unfair and deceptive trade practices.[33]

Discretion of the DFS to Act against Public Adjusters

Section 626.854, F.S., grants the DFS discretion to discipline public adjusters who engage in certain prohibited acts. In addition to denying, suspending, or revoking a license, the DFS may subject public adjusters, public adjuster apprentices, and other persons not otherwise exempt from licensure, to a fine not exceed $10,000 per prohibited act. Examples of prohibited acts under s. 626.854, F.S., include unfair and deceptive insurance trade practices or offering inducements in exchange for inspecting a residential property owner's roof or making an insurance claim for damage to a residential property owner's roof.

Motor Service Agreement Company Advertisements

Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. A motor vehicle service agreement indemnifies the vehicle owner (or holder of the agreement) against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended.[34] Motor vehicle service agreements can only be sold by a licensed and appointed salesperson.[35] Salespersons are licensed in the same manner as insurance representatives under ch. 626, F.S., with some exceptions to the requirements applied to insurance representatives.[36]

It is a second degree misdemeanor for a motor vehicle service agreement company or salesperson to issue or cause to be issued an advertisement that:

- Does not fully disclose in boldfaced type the name, address, and license number of the service agreement company;

[31] Section 626.855, F.S.
[32] Section 626.856, F.S.
[33] Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the "Florida Insurance Code."
[34] Section 634.011(8), F.S.
[35] Section 634.031, F.S.
[36] Section 634.171, F.S.

- In any respect is in violation of or does not comply with the Motor Vehicle Service Agreement Companies law, applicable provision of the Florida Insurance Code, or applicable rule of the Financial Services Commission;
- Is ambiguous, misleading, or deceptive; or
- Is false, deceptive, or misleading with respect to:
  - The service agreement company's affiliation with a motor vehicle manufacturer;
  - The service agreement company's possession of information regarding a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty;
  - The expiration of a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty; or
  - Any requirement that the motor vehicle owner register for a new motor vehicle service agreement with the company in order to maintain coverage under the current motor vehicle service agreement or manufacturer's original equipment warranty. [37]

The DFS also has the enforcement authority to deny, suspend, revoke, or refuse to renew or continue the appointment or license of any motor vehicle service agreement company or salesperson that violates these advertising disclosure requirements.[38]

Time Limitations for Prosecuting Workers' Compensation Fraud and False and Fraudulent Insurance Claims

Under s. 775.15(11), F.S., a prosecution for workers' compensation fraud under s. 440.105, F.S., and false and fraudulent insurance claims under s. 817.234, F.S., must be commenced within five years after the violation is committed. There is general confusion as to whether the intent of the subsection is to tie the two violations together under a single prosecution within the five-year time limitation, or whether violations under either statute may be prosecuted separately within the five-year time limitation.

Attorney Fees for False and Fraudulent Insurance Claims

Under current law, an insurer damaged as a result of a false or fraudulent insurance claim can bring a cause of action to recover compensatory damages plus all reasonable investigation and litigation expenses, including attorneys' fees, at the trial and appellate courts, after there has been a criminal adjudication of guilt.[39]

III. Effect of Proposed Changes:

Section 1 creates s. 324.252, F.S., related to electronic insurance verification, to require the electronic credentialing system administered by the Department of Highway Safety and Motor Vehicles (DHSMV) to display driver vehicle registration and insurance information, provide the driver with notification on any lapse in insurance coverages, and allow the driver to update his or her policy information via the electronic credentialing system.

[37] Section 634.095(3), F.S.
[38] Section 634.095, F.S.
[39] Section 817.234, F.S.

The bill requires the DHSMV to provide recommendations on the means by which the DHSMV, law enforcement agencies, and other entities authorized by the DHSMV may electronically verify a driver's compliance with ch. 324, F.S., the Financial Responsibility Law of 1955.

Section 2 amends s. 501.165, F.S., related to automatic renewals of service contracts, to require a service contract seller to allow a consumer to cancel a service contract with an automatic renewal provision in the same manner, and by the same means, as the service contract was executed.

Section 3 amends s. 626.854(22), F.S., related to prohibited acts by public adjusters, to subject public adjusters, public adjuster apprentices, and other persons not otherwise exempt from licensure, to a fine not to exceed $20,000 per act for a violation of prohibited acts under the subsection during a state of emergency declared either by executive order or proclamation of the Governor.

Section 4 amends s. 633.126, F.S., related to investigations of fraudulent insurance claims and crimes with respect to a fire or explosion, to authorize the DFS to impose an administrative fine of not more than $2,000 per day on an insurer that fails or otherwise refuses to comply with this section.

The bill grants the Division of Investigative and Forensic Services (DIFS) rulemaking authority to administer this section, provided any rules may not enlarge upon or extend the provisions of this section, identify specific factors that determine the grade of penalty, and specify mitigating and aggravating factors for any violation.

Section 5 amends s. 634.095, F.S., related to prohibited acts by motor vehicle service agreement companies, to require a written advertisement fully disclose in at least 12-point, boldface font, the name, address, and Florida Company Code of the motor vehicle service agreement company.

The bill clarifies a written advertisement does not include material prepared and presented to a consumer at the point of sale of the product to be covered by warranty or service agreement.

The bill requires a radio or television advertisement to fully disclose the full legal name of the licensed salesperson or the motor vehicle agreement company.

The bill also requires a telephone solicitation fully identify the soliciting licensed salesperson's full legal names and license number at the beginning of the telephone solicitation, and the salesperson's telephone number when the telephone solicitation ends. The telephone number may be the number on file with the DFS or the number at which the salesperson may be contacted.

Under s. 634.095, F.S., any service agreement company or salesperson that engages in violations of this act is, in addition to any applicable denial, suspension, revocation, or refusal to renew or continue any appointment or license, guilty of a second degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.

This section is effective March 1, 2023.

Section 6 amends s. 775.15, F.S., related to time limitations for prosecuting criminal offenses, to provide a technical change allowing separate prosecutions of violations of s. 440.105, F.S., or s. 817.234, F.S., within five years of a violation of either section.

Section 7 amends s. 817.234, F.S., related to false and fraudulent insurance claims, to provide an insurer damaged as a result of insurance fraud may recover reasonable investigation and litigation expense, including attorney fees, at the trial and appellate court, if the insurer had reported the possible fraudulent insurance act to DIFS and the possible fraudulent insurance act was criminally adjudicated as guilty.

Section 8 provides that except as otherwise expressly provided for in this act, this act is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Section 7 of the bill allows insurers to recover reasonable investigation and litigation expenses, including attorney fees, at the trial and appellate courts, due to criminal adjudication of guilt related to fraudulent insurance claims. Recovery of such expenses is reliant upon the insurer reporting possible false and fraudulent claims to the Division of Investigative and Forensic Services

C. Government Sector Impact:

Section 3 of the bill adds a cap on fines of $20,000 for unlicensed activity during a state of emergency. The Department of Financial Services (DFS) has indicated should there be unlicensed activity, this change could create a minimal impact to revenues.

In addition, **Section 4** of the bill gives the DFS authority to assess an administrative fine up to $2,000 per day against insurers who do not comply with reporting requirements. The DFS does not anticipate a significant fiscal impact from this change.

The Department of Highway Safety and Motor Vehicles estimates the bill has a fiscal impact of $400,000 to one million dollars. The amount is indeterminate as the technology is new and the cost is unknown.[40]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 501.165, 626.854, 633.126, 634.095, 775.15, and 817.234.

This bill creates section 324.252 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.)

PCS 895176 by Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government):
The proposed committee substitute:

- Allows warranty companies time to comply with new requirements by extending the effective date from January 1, 2023 to March 1, 2023;
- Removes a section related to rulemaking authority and increased administrative fines for fraudulent insurance acts under s. 626.989, F.S.; and
- Clarifies a written advertisement does not include material prepared and presented to a consumer at the point of sale of the product to be covered by warranty or service agreement.

[40] Telephone conversation between Elizabeth Wells, Senate Appropriations Subcommittee on Transportation, Tourism and Economic Development with Department of Highway Safety and Motor Vehicles staff (Jan. 18, 2022).

CS by Banking and Insurance on January 18, 2022:
The committee substitute:

- Removes the provisions from Section 3 and 4 of the original bill that revised the definition of an active investigation for purposes of specified public records exemptions;
- Creates s. 324.252, F.S., related to electronic insurance verification, to require the electronic credentialing system administered by the Department of Highway Safety and Motor Vehicles (DHSMV) to display driver vehicle registration and insurance information, provide the driver with notification on any lapse in personal injury or property damage insurance coverages, and allow the driver to update his or her policy information via the electronic credentialing system; and
- Requires the DHSMV to provide recommendations on the means by which the DHSMV, law enforcement agencies, and other entities authorized by the DHSMV may electronically verify a driver's compliance with ch. 324, F.S., the Financial Responsibility Law of 1955.

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	.	
03/02/2022	.	
	.	
	.	
	.	

The Committee on Appropriations (Gruters) recommended the following:

Senate Amendment (with title amendment)

Between lines 245 and 246

insert:

Section 8. The nonrecurring sum of $1,413,270 for Fiscal Year 2022-2023 shall be transferred by nonoperating budget authority from the Insurance Regulatory Trust Fund of the Department of Financial Services to the Highway Safety Operating Trust Fund of the Department of Highway Safety and Motor Vehicles to implement the electronic insurance verification

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provisions of s. 324.252, Florida Statutes.

Section 9. For the 2022-2023 fiscal year, the nonrecurring sum of $1,413,270 from the Highway Safety Operating Trust Fund is appropriated to the Information Systems Administration budget entity in the Department of Highway Safety and Motor Vehicles to implement the electronic insurance verification provisions required under s. 324.252, Florida Statutes.

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

And the title is amended as follows:

Between lines 34 and 35

insert:

an appropriation; providing



576-02678-22

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Agriculture, Environment, and General Government)

A bill to be entitled

An act relating to fraud prevention; creating s. 324.252, F.S.; requiring that the electronic credentialing system display certain vehicle information for specified purposes by a specified date; requiring the Department of Highway Safety and Motor Vehicles to provide the Legislature with recommendations for compliance verification with certain financial responsibility requirements by a specified date; amending s. 501.165, F.S.; requiring sellers to allow consumers to cancel in a specified manner and by specified means service contracts that have automatic renewal provisions; amending s. 626.854, F.S.; revising maximum fines for public adjusters and public adjuster apprentices for certain violations under a specified circumstance; revising maximum fines for certain violations by certain persons under a specified circumstance; amending s. 633.126, F.S.; authorizing the Department of Financial Services to impose an administrative fine on insurance companies under certain circumstances; deleting criminal penalties; authorizing the Division of Investigative and Forensic Services to adopt certain rules; amending s. 634.095, F.S.; revising requirements for advertisements issued or caused to be issued by service agreement companies or salespersons;



576-02678-22

specifying that certain materials are not included in the definition of the term "written advertisement"; amending s. 775.15, F.S.; revising felony violations for which prosecutions must be commenced within a specified timeframe; amending s. 817.234, F.S.; providing that certain insurers are entitled to recover specified expenses at the trial and appellate courts under certain circumstances; providing effective dates.

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

Section 1. Section 324.252, Florida Statutes, is created to read:

324.252 Electronic insurance verification.—

(1) In order to empower drivers in this state and reduce the incidence of automobile insurance fraud within this state, by July 1, 2023, the electronic credentialing system, as defined in s. 322.032(1), must display driver vehicle registration and insurance information, provide a driver with notification of any lapse in his or her insurance coverage needed for compliance with the financial responsibility requirements of this chapter, and allow the driver to update his or her policy information via the system.

(2) By October 1, 2023, the department shall provide the Legislature with recommendations on the means by which the department, law enforcement agencies, and other entities authorized by the department may electronically verify a driver's compliance with the financial responsibility

requirements of this chapter.

Section 2. Subsection (2) of section 501.165, Florida Statutes, is amended to read:

501.165 Automatic renewal of service contracts.—

(2) SERVICE CONTRACTS WITH AUTOMATIC RENEWAL PROVISIONS.—

(a) A ~~Any~~ seller that sells, leases, or offers to sell or lease any service to a consumer pursuant to a service contract that has an automatic renewal provision, unless the consumer cancels that contract, shall disclose the automatic renewal provision clearly and conspicuously in the contract or contract offer.

(b) A ~~Any~~ seller that sells or offers to sell any service to a consumer pursuant to a service contract the term of which is a specified period of 12 months or more and that automatically renews for a specified period of more than 1 month, unless the consumer cancels the contract, shall provide the consumer with written or electronic notification of the automatic renewal provision. Notification shall be provided to the consumer no less than 30 days or no more than 60 days before the cancellation deadline pursuant to the automatic renewal provision. Such notification shall disclose clearly and conspicuously:

1. That unless the consumer cancels the contract the contract will automatically renew.

2. Methods by which the consumer may obtain details of the automatic renewal provision and cancellation procedure, whether by contacting the seller at a specified telephone number or address, by referring to the contract, or by any other method.

(c) A seller that fails to comply with the requirements of

this subsection violates ~~is in violation of~~ this subsection unless the seller demonstrates that:

1. As part of the seller's routine business practice, the seller has established and implemented written procedures to comply with this section and enforces compliance with the procedures;

2. Any failure to comply with this subsection is the result of error; and

3. As part of the seller's routine business practice, where an error has caused the failure to comply with this subsection, the unearned portion of the contract subject to the automatic renewal provision is refunded as of the date on which the seller is notified of the error.

(d) A seller who enters into or renews any service contract with a consumer which includes an automatic renewal provision must allow the consumer to cancel the service contract in the same manner, and by the same means, as the consumer manifested his or her acceptance of the service contract.

(e) This subsection does not apply to:

1. A financial institution as defined in s. 655.005 or any depository institution as defined in 12 U.S.C. s. 1813(c)(2).

2. A foreign bank maintaining a branch or agency licensed under the laws of any state of the United States.

3. Any subsidiary or affiliate of an entity described in subparagraph 1. or subparagraph 2.

4. A health studio as defined in s. 501.0125.

5. Any entity licensed under chapter 624, chapter 627, chapter 634, chapter 636, or chapter 641.

6. Any electric utility as defined in s. 366.02.

7. Any private company as defined in s. 180.05 providing services described in chapter 180 which is competing against a governmental entity or has a governmental entity providing billing services on its behalf.

(f) ~~(e)~~ A violation of this subsection renders the automatic renewal provision void and unenforceable.

Section 3. Paragraphs (b) and (c) of subsection (22) of section 626.854, Florida Statutes, are amended, and paragraph (a) of that subsection is republished, to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(22)(a) Any following act by a public adjuster, a public adjuster apprentice, or a person acting on behalf of a public adjuster or public adjuster apprentice is prohibited and shall result in discipline as applicable under this part:

1. Offering to a residential property owner a rebate, gift, gift card, cash, coupon, waiver of any insurance deductible, or any other thing of value in exchange for:

a. Allowing a contractor, a public adjuster, a public adjuster apprentice, or a person acting on behalf of a public adjuster or public adjuster apprentice to conduct an inspection of the residential property owner's roof; or

b. Making an insurance claim for damage to the residential property owner's roof.

2. Offering, delivering, receiving, or accepting any compensation, inducement, or reward for the referral of any services for which property insurance proceeds would be used for

roofing repairs or replacement.

(b) Notwithstanding the fine set forth in s. 626.8698, a public adjuster or public adjuster apprentice may be subject to a fine not to exceed $10,000 per act for a violation of this subsection and a fine not to exceed $20,000 per act for a violation of this subsection that occurs during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36.

(c) A person who engages in an act prohibited by this subsection and who is not a public adjuster or a public adjuster apprentice, or is not otherwise exempt from licensure, is guilty of the unlicensed practice of public adjusting and may be:

1. Subject to all applicable penalties set forth in this part.

2. Notwithstanding subparagraph 1., subject to a fine not to exceed $10,000 per act for a violation of this subsection and a fine not to exceed $20,000 per act for a violation of this subsection that occurs during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36.

Section 4. Subsection (9) of section 633.126, Florida Statutes, is amended, subsection (10) is added to that section, and subsection (2) of that section is republished, to read:

633.126 Investigation of fraudulent insurance claims and crimes; immunity of insurance companies supplying information.—

(2) If an insurance company has reason to suspect that a fire or explosion loss to its insured's real or personal property was caused by intentional means, the company shall notify the State Fire Marshal and shall furnish her or him with

all material acquired by the company during its investigation. The State Fire Marshal may adopt rules to implement this subsection.

(9) If an insurance company fails or otherwise refuses to comply with this section, the department may impose an administrative fine of not more than $2,000 per day for such failure until the department deems the insurance company to be in compliance ~~A person who willfully violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083~~.

(10) The Division of Investigative and Forensic Services may adopt reasonable rules as are necessary to administer this section. Such rules must meet all of the following requirements:

(a) They may not enlarge upon or extend the provisions of this section.

(b) They must identify specific factors that determine the grades of penalty.

(c) They must specify mitigating and aggravating factors for a violation of this section.

Section 5. Effective March 1, 2023, present paragraphs (b), (c), and (d) of subsection (3) of section 634.095, Florida Statutes, are redesignated as paragraphs (d), (e), and (f), respectively, new paragraphs (b) and (c) are added to that subsection, and paragraph (a) of that subsection is amended, to read:

634.095 Prohibited acts.—Any service agreement company or salesperson that engages in one or more of the following acts is, in addition to any applicable denial, suspension, revocation, or refusal to renew or continue any appointment or

license, guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083:

(3) Issuing or causing to be issued any advertisement which:

(a) Does not fully disclose in a written advertisement, in at least 12-point, boldface ~~boldfaced~~ type, the name, address, and Florida Company Code ~~license number~~ of the service agreement company. As used in this paragraph, the term "written advertisement" does not include material prepared for a specific consumer and presented to that consumer at the point of sale of the product to be covered by a warranty or service agreement.

(b) Does not fully disclose in a radio or television advertisement the full legal name of the licensed salesperson or the service agreement company.

(c) Does not fully identify the soliciting licensed salesperson's full legal name and license number when the salesperson begins, and the soliciting salesperson's telephone number when the salesperson concludes, each outbound telephone solicitation. For the purposes of this paragraph, the actual telephone number of the salesperson may be the number on file with the department or the number at which the salesperson may be contacted.

Section 6. Subsection (11) of section 775.15, Florida Statutes, is amended to read:

775.15 Time limitations; general time limitations; exceptions.—

(11) A prosecution for a felony violation of s. 440.105 or s. 817.234 ~~ss. 440.105 and 817.234~~ must be commenced within 5 years after the violation is committed.

Section 7. Subsection (5) of section 817.234, Florida Statutes, is amended to read:

817.234 False and fraudulent insurance claims.—

(5)(a) Any insurer damaged as a result of a violation of any provision of this section when there has been a criminal adjudication of guilt shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorney ~~attorneys'~~ fees, at the trial and appellate courts.

(b) If an insurer damaged as a result of a violation of any provision of this section has reported the possible fraudulent insurance act to the Division of Investigative and Forensic Services pursuant to s. 626.9891 and if there has been a criminal adjudication of guilt, the insurer is entitled to recover reasonable investigation and litigation expenses, including attorney fees, at the trial and appellate courts.

Section 8. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1292
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Banking and Insurance Committee; and Senators Gruters and Bradley
SUBJECT:	Fraud Prevention
DATE:	March 2, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	**Fav/CS**
2.	Sanders	Betta	AEG	**Recommend: Fav/CS**
3.	Sanders	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1292 modifies provisions in several areas related to the prevention of various forms of fraud. The bill:

- Requires the electronic credentialing system administered by the Department of Highway Safety and Motor Vehicles (DHSMV) to display driver vehicle registration and insurance information, provide the driver notice of any lapse in insurance coverage, and allow the driver to use the system to update policy information;
- Requires the DHSMV to provide recommendations on the means by which the DHSMV, law enforcement agencies, and other entities authorized by the DHSMV may electronically verify a driver's compliance with chapter 324, Florida Statutes, the Financial Responsibility Law of 1955;
- Requires a seller of any service contract with an automatic renewal provision to allow a consumer to cancel the contract in the same manner, and by the same means, as the contract was executed;
- Subjects a public adjuster, public adjuster apprentice, or other person not otherwise exempt from licensure as a public adjuster, to a fine not to exceed $20,000 per act for a violation of prohibited acts under section 626.854, Florida Statutes, during a state of emergency;
- Authorizes the Department of Financial Services (DFS) to impose a $2,000 per day administrative fine on an insurer that fails or refuses to comply with section 633.126, Florida

Statutes, related to fraudulent insurance claims and crimes with respect to a fire and explosion;
- Authorizes the DFS Division of Investigative and Forensic Services (DIFS) to adopt rules to administer section 633.126, Florida Statutes, related to fraudulent insurance claims and crimes with respect to a fire and explosion;
- Requires a motor vehicle service agreement company's written advertisement to fully disclose in at least 12-point, boldface font, the name, address, and Florida Company Code of the motor vehicle service agreement company;
- Requires a motor vehicle service agreement company's radio or television advertisement to fully disclose the full legal name of the licensed salesperson or the motor vehicle agreement company;
- Requires a motor vehicle service agreement company's telephone solicitation fully identify the soliciting licensed salesperson's full legal name and license number at the beginning of the telephone solicitation, and the salesperson's telephone number when the telephone solicitation ends;
- Clarifies a written advertisement does not include material prepared and presented to a consumer at the point of sale of the product to be covered by warranty or service agreement.
- Provides a technical change under section 775.15, Florida Statutes, related to time limitations for prosecuting criminal offenses, to allow separate prosecutions of workers' compensation fraud under section 440.105, Florida Statutes, and false and fraudulent insurance claims under section 817.234, Florida Statutes, within five years of a violation of either section; and
- Authorizes an insurer damaged as a result of insurance fraud to recover reasonable investigation and litigation expense, including attorney fees, at the trial and appellate court, if the insurer had reported the possible fraudulent insurance act to the DIFS and the possible fraudulent insurance act was criminally adjudicated as guilty.

The bill has an indeterminate, yet potentially negative impact on state revenues and expenditures. The bill provides an appropriation of $1,413,270 to implement certain provisions of the bill. *See* **Section V. Fiscal Impact Statement** below.

The bill takes effect upon becoming a law, except as otherwise provided.

II. Present Situation:

Electronic Credentialing System

The 2021 Legislature[1] created the electronic credentialing system within the Department of Highway Safety and Motor Vehicles (DHSMV) for purposes of establishing a secure and uniform system for issuing an optional digital proof of driver license or identification card.[2] The electronic credentialing system may not retain internet protocol addresses, geolocation data, or other information that describes the location, computer, computer system, or computer network from which a customer accesses the system.[3]

[1] Chapter 2021-235, L.O.F.
[2] Section 322.032(2)(a), F.S.
[3] Section 322.032(2)(b), F.S.

Required Notification of New, Cancelled, Nonrenewed, and Lapsed Motor Vehicle Insurance Coverages

Section 324.0221, F.S., requires insurers to report new, cancelled, or nonrenewed personal injury protection or property damage insurance coverages to DHSMV within 10 days. Prior to notifying the DHSMV, the insurer must provide the named insured, or the first-named insured in the case of a commercial fleet policy, with written notice the cancellation or nonrenewal will be reported to the DHSMV. The notice must also inform the named insured that failure to maintain personal injury protection and property damage insurance coverages on a motor vehicle when required by law may result in the loss of registration and driving privileges in Florida and inform the named insured of the amount of any reinstatement fees.

Service Contracts with Automatic Renewal Provisions

Florida law governs the automatic renewal provisions of service contracts such that a service contract may automatically renew at the end of its term without any additional action required by either party under certain circumstances.

If the automatic renewal provision renews a service contract for more than one month and caused the service contract to be in effect for more than six months after the service contract was executed, the seller must clearly and conspicuously disclose the automatic renewal provision to the consumer. Renewal is effective unless the consumer does not give notice to the seller of intent to terminate the service contract.[4] However, in the case of a service contract with a term of 12 months that automatically renews for more than one month, the seller must provide written or electronic notification to consumers no more than 60 and no less than 30 days prior to the cancellation deadline pursuant to the automatic renewal provision.[5]

Violations of the disclosure and notice requirements void an automatic renewal provision, rendering it unenforceable,[6] unless the seller demonstrates:

- It has established and implemented written procedures to comply with, and enforce, the requirements as part of their routine business practice;
- The failure to comply was the result of error; and
- It has provided, as part of its routine business practice, a refund or credit for the unearned portion of the renewed contract, starting from the date the seller is notified of the error. [7]

State and federal financial institutions or any subsidiary or affiliate thereof, health studios,[8] licensed insurers, warranty associations,[9] health care service organizations[10] and programs,[11]

[4] Section 501.165(2)(a), F.S.
[5] Section 501.165(2)(b), F.S.
[6] Section 501.165(2)(e), F.S.
[7] Section 501.165(2)(b), F.S.
[8] Pursuant to s. 501.0125(1), F.S., any person who is engaged in the sale of services for instruction, training, or assistance in a program of physical exercise or in the sale of services for the right or privilege to use equipment or facilities in furtherance of a program of physical exercise. The term does not include an individual acting as a personal trainer.
[9] Chapter 634, F.S., includes motor vehicle service agreement companies, home warranty associations, and service warranty associations.
[10] Chapter 641, F.S., includes health maintenance organizations, prepaid health clinics, and health care services.
[11] Chapter 636, F.S., includes prepaid limited health service organizations and discount plan organizations.

electric utilities,[12] and private companies providing certain municipal services[13] are expressly exempt.

The Department of Financial Services

The Department of Financial Services (DFS) is statutorily responsible for:

- Carrying out the state's accounting and auditing functions, including preparing the state's Comprehensive Annual Financial Report; monitoring state contracts; and making payment for state expenditures;
- Implementing state fire prevention and control measures, including the investigation of arson and other suspicious fires; training and certification of firefighter candidates; and regulation of explosive storage and use;
- Operating the state's risk management program and securing insurance and reinsurance for covered state liabilities;
- Managing the state Treasury and directing safekeeping and the investment of all state funds;
- Managing the deferred compensation program for state employees;
- Investigating fraud, including insurance fraud, public assistance fraud, and false claims against the state;
- Regulating cemeteries and funeral homes;
- Licensing and oversight of insurance agents and agencies;
- Ensuring Florida employers provide workers' compensation coverage for their employees in a cost effective manner;
- Assisting consumers in the resolution of issues pertaining to insurance and funeral services; and
- Collecting and returning unclaimed property belonging to Florida residents.[14]

The DFS is composed of the following divisions and offices:

- Accounting and Auditing;
- Administration;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Insurance Consumer Advocate;
- Investigative and Forensic Services;
- Public Assistance Fraud;
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;
- Unclaimed Property; and

[12] Pursuant to s. 366.02(2), F.S., any municipal electric utility, investor-owner electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state.
[13] Pursuant to s. 180.05, F.S., any company or corporation duly authorized under the laws of the state to construct or operate water works systems, sewerage systems, sewage treatment works, garbage collection, and garbage disposal plants.
[14] The Florida Department of Financial Services (DFS), *Statement of Agency Organization and Operation*, https://www.myfloridacfo.com/sitePages/required/agencyorg.htm (last visited Jan. 10, 2022).

- Workers' Compensation.[15]

The DFS Division of Investigative and Forensic Services

The Division of Investigative and Forensic Services (DIFS) houses all law enforcement and forensic components residing within the DFS. The DIFS has broad authority to investigate a wide range of fraudulent and criminal acts within and outside the state including, but not limited to, insurance fraud; workers' compensation fraud investigations; fire, arson, and explosives investigations; and fire and explosive sample analysis.[16] The DIFS also refers any records tending to show criminal violations to state or federal law enforcement or prosecutorial agencies, and provides investigative to those agencies as required, when the DIFS believes that a criminal law of the state has been violated.[17]

The DFIS is composed of the following bureaus and offices:
- Forensic Services;
- Fire, Arson, and Explosives Investigations;
- Fiscal Integrity;
- Insurance Fraud; and
- Workers' Compensation Fraud.[18]

The DFS Division of State Fire Marshal

The Division of State Fire Marshal (State Fire Marshal) works to reduce the loss of life and property to fire and other disasters statewide through internal and external leadership, standards and training, and prevention and education. The State Fire Marshal has the expressed authority to enforce all laws and adopted rules related to:
- The prevention of fire and explosion through the regulation of conditions which could cause fire or explosion, the spread of fire, and panic resulting therefrom;
- Installation and maintenance of fire alarm systems and fire protection systems, including fire suppression systems, fire-extinguishing equipment, and fire sprinkler systems;
- Servicing, repairing, recharging, testing, marking, inspecting, installing, maintaining, and tagging of fire extinguishers, preengineered systems, and individually designed fire protection systems;
- The training and licensing of persons engaged in the business of servicing, repairing, recharging, testing, marking, inspecting, installing, maintaining, and tagging of fire extinguishers, preengineered systems, and individually designed fire protection systems;
- The maintenance of fire cause and loss records; and
- Suppression of arson and the investigation of the cause, origin, and circumstances of fire.[19]

The State Fire Marshal is composed of the Bureau of Fire Prevention and the Bureau of Fire Standards and Training.[20]

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[15] Section 20.121(2), F.S.
[16] *See* supra note 11.
[17] Section 20.121(2)(e), F.S.
[18] *Id*.
[19] Section 633.104(2), F.S.
[20] *See* supra note 11.

Authority of the DFS to Compel Production of Records Related to Insurance Fraud and Arson Investigations

Under s. 633.126, F.S., the State Fire Marshal and DIFS investigators may request any insurance company or its agent, adjuster, employee, or attorney, investigating a claim under an insurance policy or contract with respect to a fire or explosion to release any information whatsoever in the possession of the insurance company or its agent, adjuster, employee, or attorney relative to a loss from that fire or explosion. A person who willfully refuses to release any information requested by a State Fire Marshal or DISF investigator commits a first degree misdemeanor.[21]

Regulation of Insurance Adjusters

Florida law requires all insurance adjusters to be licensed by the DFS and appointed by the appropriate entity or person[22] in order to adjust claims. General requirements for licensure include submitting an application; paying required fees; satisfying pre-licensing examination requirements, when applicable; complying with requirements as to knowledge, experience, or instruction; and submitting fingerprints.[23]

Under s. 626.864, F.S., there are both public adjusters and all-lines adjuster license types, with all-lines appointments further divided into independent adjusters,[24] company employee adjusters,[25] and public adjuster apprentices.[26] The same adjuster may not be concurrently licensed as a public adjuster and an all-lines adjuster.[27] In the case of an all-lines adjuster, the adjuster may be appointed as an independent adjuster, company employee adjuster, or public adjuster apprentice, but not more than one concurrently.[28]

A public adjuster is any person, other than a licensed attorney, who, for compensation, prepares, completes, or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of an insured or third party.[29] Public adjusters operate independently and are not affiliated with any insurer.

An all-lines adjuster is any person who, for compensation, ascertains and determines the amount of any claim, loss, or damage payable under an insurance contract or settles such claim, loss, or damage on behalf of a public adjuster or insurer.[30]

[21] Section 633.126(9), F.S.
[22] *See* s. 626.015(4), F.S., defining "appointment" as the authority given by an insurer or employer to a licensee to adjust claims on behalf of an insurer or employer.
[23] Section 626.171, F.S.
[24] Section 626.855, F.S.
[25] Section 626.856, F.S.
[26] Section 626.8561, F.S.
[27] Section 626.864(2), F.S.
[28] Section 626.864(3), F.S.
[29] Section 626.854(1), F.S.
[30] Section 626.8548, F.S.

An independent adjuster is any person who is self-employed or employed by an independent adjusting firm and who works for an insurer to ascertain and determine the amount of an insurance claim, loss, or damage, or to settle an insurance claim under an insurance contract.[31]

A company employee adjuster is any person employed in-house by an insurer, or a wholly owned subsidiary of the insurer, who ascertains and determines the amount of an insurance claim, loss, or damage, or settles such claim, loss or damage.[32]

Discretion of the DFS to Act against Licensees

Section 626.621, F.S., grants the DFS discretion, under certain circumstances, to deny applications for, revoke, or refuse to renew, the licenses or appointments of agents, adjusters, customer representatives, service representatives, and managing general agents. Examples of circumstances that can lead to such agency action include violation of the Florida Insurance Code, violation of lawful orders or rules of the DFS, and engaging in unfair and deceptive trade practices.[33]

Discretion of the DFS to Act against Public Adjusters

Section 626.854, F.S., grants the DFS discretion to discipline public adjusters who engage in certain prohibited acts. In addition to denying, suspending, or revoking a license, the DFS may subject public adjusters, public adjuster apprentices, and other persons not otherwise exempt from licensure, to a fine not exceed $10,000 per prohibited act. Examples of prohibited acts under s. 626.854, F.S., include unfair and deceptive insurance trade practices or offering inducements in exchange for inspecting a residential property owner's roof or making an insurance claim for damage to a residential property owner's roof.

Motor Service Agreement Company Advertisements

Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. A motor vehicle service agreement indemnifies the vehicle owner (or holder of the agreement) against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended.[34] Motor vehicle service agreements can only be sold by a licensed and appointed salesperson.[35] Salespersons are licensed in the same manner as insurance representatives under ch. 626, F.S., with some exceptions to the requirements applied to insurance representatives.[36]

It is a second degree misdemeanor for a motor vehicle service agreement company or salesperson to issue or cause to be issued an advertisement that:

- Does not fully disclose in boldfaced type the name, address, and license number of the service agreement company;

[31] Section 626.855, F.S.
[32] Section 626.856, F.S.
[33] Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the "Florida Insurance Code."
[34] Section 634.011(8), F.S.
[35] Section 634.031, F.S.
[36] Section 634.171, F.S.

- In any respect is in violation of or does not comply with the Motor Vehicle Service Agreement Companies law, applicable provision of the Florida Insurance Code, or applicable rule of the Financial Services Commission;
- Is ambiguous, misleading, or deceptive; or
- Is false, deceptive, or misleading with respect to:
  - The service agreement company's affiliation with a motor vehicle manufacturer;
  - The service agreement company's possession of information regarding a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty;
  - The expiration of a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty; or
  - Any requirement that the motor vehicle owner register for a new motor vehicle service agreement with the company in order to maintain coverage under the current motor vehicle service agreement or manufacturer's original equipment warranty. [37]

The DFS also has the enforcement authority to deny, suspend, revoke, or refuse to renew or continue the appointment or license of any motor vehicle service agreement company or salesperson that violates these advertising disclosure requirements.[38]

Time Limitations for Prosecuting Workers' Compensation Fraud and False and Fraudulent Insurance Claims

Under s. 775.15(11), F.S., a prosecution for workers' compensation fraud under s. 440.105, F.S., and false and fraudulent insurance claims under s. 817.234, F.S., must be commenced within five years after the violation is committed. There is general confusion as to whether the intent of the subsection is to tie the two violations together under a single prosecution within the five-year time limitation, or whether violations under either statute may be prosecuted separately within the five-year time limitation.

Attorney Fees for False and Fraudulent Insurance Claims

Under current law, an insurer damaged as a result of a false or fraudulent insurance claim can bring a cause of action to recover compensatory damages plus all reasonable investigation and litigation expenses, including attorneys' fees, at the trial and appellate courts, after there has been a criminal adjudication of guilt.[39]

III. Effect of Proposed Changes:

Section 1 creates s. 324.252, F.S., related to electronic insurance verification, to require the electronic credentialing system administered by the Department of Highway Safety and Motor Vehicles (DHSMV) to display driver vehicle registration and insurance information, provide the driver with notification on any lapse in insurance coverages, and allow the driver to update his or her policy information via the electronic credentialing system.

[37] Section 634.095(3), F.S.
[38] Section 634.095, F.S.
[39] Section 817.234, F.S.

The bill requires the DHSMV to provide recommendations on the means by which the DHSMV, law enforcement agencies, and other entities authorized by the DHSMV may electronically verify a driver's compliance with ch. 324, F.S., the Financial Responsibility Law of 1955.

Section 2 amends s. 501.165, F.S., related to automatic renewals of service contracts, to require a service contract seller to allow a consumer to cancel a service contract with an automatic renewal provision in the same manner, and by the same means, as the service contract was executed.

Section 3 amends s. 626.854(22), F.S., related to prohibited acts by public adjusters, to subject public adjusters, public adjuster apprentices, and other persons not otherwise exempt from licensure, to a fine not to exceed $20,000 per act for a violation of prohibited acts under the subsection during a state of emergency declared either by executive order or proclamation of the Governor.

Section 4 amends s. 633.126, F.S., related to investigations of fraudulent insurance claims and crimes with respect to a fire or explosion, to authorize the DFS to impose an administrative fine of not more than $2,000 per day on an insurer that fails or otherwise refuses to comply with this section.

The bill grants the Division of Investigative and Forensic Services (DIFS) rulemaking authority to administer this section, provided any rules may not enlarge upon or extend the provisions of this section, identify specific factors that determine the grade of penalty, and specify mitigating and aggravating factors for any violation.

Section 5 amends s. 634.095, F.S., related to prohibited acts by motor vehicle service agreement companies, to require a written advertisement fully disclose in at least 12-point, boldface font, the name, address, and Florida Company Code of the motor vehicle service agreement company.

The bill clarifies a written advertisement does not include material prepared and presented to a consumer at the point of sale of the product to be covered by warranty or service agreement.

The bill requires a radio or television advertisement to fully disclose the full legal name of the licensed salesperson or the motor vehicle agreement company.

The bill also requires a telephone solicitation fully identify the soliciting licensed salesperson's full legal names and license number at the beginning of the telephone solicitation, and the salesperson's telephone number when the telephone solicitation ends. The telephone number may be the number on file with the DFS or the number at which the salesperson may be contacted.

Under s. 634.095, F.S., any service agreement company or salesperson that engages in violations of this act is, in addition to any applicable denial, suspension, revocation, or refusal to renew or continue any appointment or license, guilty of a second degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.

This section is effective March 1, 2023.

Section 6 amends s. 775.15, F.S., related to time limitations for prosecuting criminal offenses, to provide a technical change allowing separate prosecutions of violations of s. 440.105, F.S., or s. 817.234, F.S., within five years of a violation of either section.

Section 7 amends s. 817.234, F.S., related to false and fraudulent insurance claims, to provide an insurer damaged as a result of insurance fraud may recover reasonable investigation and litigation expense, including attorney fees, at the trial and appellate court, if the insurer had reported the possible fraudulent insurance act to DIFS and the possible fraudulent insurance act was criminally adjudicated as guilty.

Section 8 transfers by nonoperating budget authority, the nonrecurring sum of $1,413,270 for Fiscal Year 2022-2023 from the DFS' Insurance Regulatory Trust Fund to the DHSMV's Highway Safety Operating Trust Fund for implementation of the electronic automobile insurance credentialing provisions of s. 324.252, F.S.

Section 9 provides the nonrecurring sum of $1,413,270 from the DHSMV's Highway Safety Operating Trust Fund is appropriated to the DHSMV's Information Systems Administration for implementation of the electronic automobile credentialing system.

Section 10 provides that except as otherwise expressly provided for in this act, this act is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Section 7 of the bill allows insurers to recover reasonable investigation and litigation expenses, including attorney fees, at the trial and appellate courts, due to criminal adjudication of guilt related to fraudulent insurance claims. Recovery of such expenses is reliant upon the insurer reporting possible false and fraudulent claims to the Division of Investigative and Forensic Services

C. Government Sector Impact:

Section 3 of the bill adds a cap on fines of $20,000 for unlicensed activity during a state of emergency. The Department of Financial Services (DFS) has indicated should there be unlicensed activity, this change could create a minimal impact to revenues.

In addition, **Section 4** of the bill gives the DFS authority to assess an administrative fine up to $2,000 per day against insurers who do not comply with reporting requirements. The DFS does not anticipate a significant fiscal impact from this change.

The Department of Highway Safety and Motor Vehicles (DHSMV estimates the bill has a nonrecurring cost of $1,413,270 for implementation and a recurring cost of $200,00 for annual system operations and maintenance.[40]

The bill directs the DFS to transfer, by non-operating budget authority, $1,413,270 in nonrecurring funds from the DFS' Insurance Regulatory Trust Fund to the DHSMV's Highway Safety Operating Trust Fund to implement s. 324.252, F.S.

In addition, the bill appropriates funds for implementation of the electronic insurance credentialing system by appropriating $1,413,270 in nonrecurring funds the DHSMV's Information Systems Administration budget entity for the purpose of implementing the electronic insurance credentialing system. The DHSMV has indicated the annual cost of system operation and maintenance can be absorbed within existing resources.[41]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 501.165, 626.854, 633.126, 634.095, 775.15, and 817.234.

[40] Email from Department of Highway Safety and Motor Vehicles (February 28, 2022) (on file with Senate Committee on Appropriations)
[41] *Id*.

This bill creates section 324.252 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 Appropriations on February 28, 2022:
The committee substitute:

- Allows warranty companies time to comply with new requirements by extending the effective date from January 1, 2023 to March 1, 2023;
- Removes a section related to rulemaking authority and increased administrative fines for fraudulent insurance acts under s. 626.989, F.S.;
- Clarifies a written advertisement does not include material prepared and presented to a consumer at the point of sale of the product to be covered by warranty or service agreement;
- Transfers by nonoperating budget authority, a nonrecurring appropriation of $1,413,270 for Fiscal Year 2022-2023 from the Department of Financial Services' Insurance Regulatory Trust Fund to the Department of Highway Safety and Motor Vehicles' (DHSMV) Motor Vehicles' Highway Safety Operating Trust Fund for implementation of the electronic automobile insurance credentialing system; and
- Provides the DHSMV's Division of Information Systems Administration is appropriated $1,413,270 in nonrecurring funds for Fiscal Year 2022-2023, from the DHSMV's Motor Vehicles' Highway Safety Operating Trust Fund, for the purpose of implementing the electronic automobile insurance credentialing system.

CS by Banking and Insurance on January 18, 2022:
The committee substitute:

- Removes the provisions from Section 3 and 4 of the original bill that revised the definition of an active investigation for purposes of specified public records exemptions;
- Creates s. 324.252, F.S., related to electronic insurance verification, to require the electronic credentialing system administered by the Department of Highway Safety and Motor Vehicles (DHSMV) to display driver vehicle registration and insurance information, provide the driver with notification on any lapse in personal injury or property damage insurance coverages, and allow the driver to update his or her policy information via the electronic credentialing system; and
- Requires the DHSMV to provide recommendations on the means by which the DHSMV, law enforcement agencies, and other entities authorized by the DHSMV may electronically verify a driver's compliance with ch. 324, F.S., the Financial Responsibility Law of 1955.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Gruters

597-02088-22 20221292c1

A bill to be entitled

An act relating to fraud prevention; creating s. 324.252, F.S.; requiring that the electronic credentialing system display certain vehicle information for specified purposes by a specified date; requiring the Department of Highway Safety and Motor Vehicles to provide the Legislature with recommendations for compliance verification with certain financial responsibility requirements by a specified date; amending s. 501.165, F.S.; requiring sellers to allow consumers to cancel in a specified manner and by specified means service contracts that have automatic renewal provisions; amending s. 626.854, F.S.; revising maximum fines for public adjusters and public adjuster apprentices for certain violations under a specified circumstance; revising maximum fines for certain violations by certain persons under a specified circumstance; amending s. 626.989, F.S.; authorizing the Department of Financial Services to impose an administrative fine on insurers under certain circumstances; authorizing the Division of Investigative and Forensic Services to adopt certain rules; amending s. 633.126, F.S.; authorizing the department to impose an administrative fine on insurance companies under certain circumstances; deleting criminal penalties; authorizing the division to adopt certain rules; amending s. 634.095, F.S.; revising requirements for advertisements issued or caused to be issued by service agreement companies or

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salespersons; amending s. 775.15, F.S.; revising felony violations for which prosecutions must be commenced within a specified timeframe; amending s. 817.234, F.S.; providing that certain insurers are entitled to recover specified expenses at the trial and appellate courts under certain circumstances; providing effective dates.

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

Section 1. Section 324.252, Florida Statutes, is created to read:

324.252 Electronic insurance verification.—

(1) In order to empower drivers in this state and reduce the incidence of automobile insurance fraud within this state, by July 1, 2023, the electronic credentialing system, as defined in s. 322.032(1), must display driver vehicle registration and insurance information, provide a driver with notification of any lapse in his or her insurance coverage needed for compliance with the financial responsibility requirements of this chapter, and allow the driver to update his or her policy information via the system.

(2) By October 1, 2023, the department shall provide the Legislature with recommendations on the means by which the department, law enforcement agencies, and other entities authorized by the department may electronically verify a driver's compliance with the financial responsibility requirements of this chapter.

Section 2. Subsection (2) of section 501.165, Florida

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Statutes, is amended to read:

501.165 Automatic renewal of service contracts.—

(2) SERVICE CONTRACTS WITH AUTOMATIC RENEWAL PROVISIONS.—

(a) A ~~Any~~ seller that sells, leases, or offers to sell or lease any service to a consumer pursuant to a service contract that has an automatic renewal provision, unless the consumer cancels that contract, shall disclose the automatic renewal provision clearly and conspicuously in the contract or contract offer.

(b) A ~~Any~~ seller that sells or offers to sell any service to a consumer pursuant to a service contract the term of which is a specified period of 12 months or more and that automatically renews for a specified period of more than 1 month, unless the consumer cancels the contract, shall provide the consumer with written or electronic notification of the automatic renewal provision. Notification shall be provided to the consumer no less than 30 days or no more than 60 days before the cancellation deadline pursuant to the automatic renewal provision. Such notification shall disclose clearly and conspicuously:

1. That unless the consumer cancels the contract the contract will automatically renew.

2. Methods by which the consumer may obtain details of the automatic renewal provision and cancellation procedure, whether by contacting the seller at a specified telephone number or address, by referring to the contract, or by any other method.

(c) A seller that fails to comply with the requirements of this subsection violates ~~is in violation of~~ this subsection unless the seller demonstrates that:

1. As part of the seller's routine business practice, the seller has established and implemented written procedures to comply with this section and enforces compliance with the procedures;

2. Any failure to comply with this subsection is the result of error; and

3. As part of the seller's routine business practice, where an error has caused the failure to comply with this subsection, the unearned portion of the contract subject to the automatic renewal provision is refunded as of the date on which the seller is notified of the error.

(d) A seller shall allow a consumer to cancel a service contract that has an automatic renewal provision in the same manner, and by the same means, as the service contract was entered into.

(e) This subsection does not apply to:

1. A financial institution as defined in s. 655.005 or any depository institution as defined in 12 U.S.C. s. 1813(c)(2).

2. A foreign bank maintaining a branch or agency licensed under the laws of any state of the United States.

3. Any subsidiary or affiliate of an entity described in subparagraph 1. or subparagraph 2.

4. A health studio as defined in s. 501.0125.

5. Any entity licensed under chapter 624, chapter 627, chapter 634, chapter 636, or chapter 641.

6. Any electric utility as defined in s. 366.02.

7. Any private company as defined in s. 180.05 providing services described in chapter 180 which is competing against a governmental entity or has a governmental entity providing

billing services on its behalf.

(f)~~(c)~~ A violation of this subsection renders the automatic renewal provision void and unenforceable.

Section 3. Paragraphs (b) and (c) of subsection (22) of section 626.854, Florida Statutes, are amended, and paragraph (a) of that subsection is republished, to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(22)(a) Any following act by a public adjuster, a public adjuster apprentice, or a person acting on behalf of a public adjuster or public adjuster apprentice is prohibited and shall result in discipline as applicable under this part:

1. Offering to a residential property owner a rebate, gift, gift card, cash, coupon, waiver of any insurance deductible, or any other thing of value in exchange for:

a. Allowing a contractor, a public adjuster, a public adjuster apprentice, or a person acting on behalf of a public adjuster or public adjuster apprentice to conduct an inspection of the residential property owner's roof; or

b. Making an insurance claim for damage to the residential property owner's roof.

2. Offering, delivering, receiving, or accepting any compensation, inducement, or reward for the referral of any services for which property insurance proceeds would be used for roofing repairs or replacement.

(b) Notwithstanding the fine set forth in s. 626.8698, a public adjuster or public adjuster apprentice may be subject to

a fine not to exceed $10,000 per act for a violation of this subsection and a fine not to exceed $20,000 per act for a violation of this subsection that occurs during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36.

(c) A person who engages in an act prohibited by this subsection and who is not a public adjuster or a public adjuster apprentice, or is not otherwise exempt from licensure, is guilty of the unlicensed practice of public adjusting and may be:

1. Subject to all applicable penalties set forth in this part.

2. Notwithstanding subparagraph 1., subject to a fine not to exceed $10,000 per act for a violation of this subsection and a fine not to exceed $20,000 per act for a violation of this subsection that occurs during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36.

Section 4. Present subsections (7), (8), and (9) of section 626.989, Florida Statutes, are redesignated as subsections (9), (10), and (11), respectively, new subsections (7) and (8) and subsection (12) are added to that section, and subsection (6) of that section is amended, to read:

626.989 Investigation by department or Division of Investigative and Forensic Services; compliance; immunity; confidential information; reports to division; division investigator's power of arrest.—

(6) Any person, other than an insurer, agent, or other person licensed under the code, or an employee thereof, having knowledge or who believes that a fraudulent insurance act or any

other act or practice which, upon conviction, constitutes a felony or a misdemeanor under the code, or under s. 817.234, is being or has been committed may send to the Division of Investigative and Forensic Services a report or information pertinent to such knowledge or belief and such additional information relative thereto as the department may request. Any professional practitioner licensed or regulated by the Department of Business and Professional Regulation, except as otherwise provided by law, any medical review committee as defined in s. 766.101, any private medical review committee, and any insurer, agent, or other person licensed under the code, or an employee thereof, having knowledge or who believes that a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under the code, or under s. 817.234, is being or has been committed shall send to the Division of Investigative and Forensic Services a report or information pertinent to such knowledge or belief and such additional information relative thereto as the department may require.

(7) If an insurer fails or otherwise refuses to comply with this section, the department may impose an administrative fine of not more than $2,000 per day for such failure until the department deems the insurer to be in compliance.

(8) The Division of Investigative and Forensic Services shall review such information or reports and select such information or reports as, in its judgment, may require further investigation. It shall then cause an independent examination of the facts surrounding such information or report to be made to determine the extent, if any, to which a fraudulent insurance

act or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under the code, or under s. 817.234, is being committed. The Division of Investigative and Forensic Services shall report any alleged violations of law which its investigations disclose to the appropriate licensing agency and state attorney or other prosecuting agency having jurisdiction with respect to any such violation, as provided in s. 624.310. If prosecution by the state attorney or other prosecuting agency having jurisdiction with respect to such violation is not begun within 60 days of the division's report, the state attorney or other prosecuting agency having jurisdiction with respect to such violation shall inform the division of the reasons for the lack of prosecution.

(12) The Division of Investigative and Forensic Services may adopt reasonable rules as are necessary to administer this section. Such rules must meet all of the following requirements:

(a) They may not enlarge upon or extend the provisions of this section.

(b) They must identify specific factors that determine the grades of penalty.

(c) They must specify mitigating and aggravating factors for a violation of this section.

Section 5. Subsection (9) of section 633.126, Florida Statutes, is amended, subsection (10) is added to that section, and subsection (2) of that section is republished, to read:

633.126 Investigation of fraudulent insurance claims and crimes; immunity of insurance companies supplying information.—

(2) If an insurance company has reason to suspect that a fire or explosion loss to its insured's real or personal

property was caused by intentional means, the company shall notify the State Fire Marshal and shall furnish her or him with all material acquired by the company during its investigation. The State Fire Marshal may adopt rules to implement this subsection.

(9) If an insurance company fails or otherwise refuses to comply with this section, the department may impose an administrative fine of not more than $2,000 per day for such failure until the department deems the insurance company to be in compliance ~~A person who willfully violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083~~.

(10) The Division of Investigative and Forensic Services may adopt reasonable rules as are necessary to administer this section. Such rules must meet all of the following requirements:

(a) They may not enlarge upon or extend the provisions of this section.

(b) They must identify specific factors that determine the grades of penalty.

(c) They must specify mitigating and aggravating factors for a violation of this section.

Section 6. Effective January 1, 2023, present paragraphs (b), (c), and (d) of subsection (3) of section 634.095, Florida Statutes, are redesignated as paragraphs (d), (e), and (f), respectively, new paragraphs (b) and (c) are added to that subsection, and paragraph (a) of that subsection is amended, to read:

634.095 Prohibited acts.—Any service agreement company or salesperson that engages in one or more of the following acts

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is, in addition to any applicable denial, suspension, revocation, or refusal to renew or continue any appointment or license, guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083:

(3) Issuing or causing to be issued any advertisement that ~~which~~:

(a) Does not fully disclose in a written advertisement, in at least 12-point, boldface ~~boldfaced~~ type, the name, address, and Florida Company Code ~~license number~~ of the service agreement company.

(b) Does not fully disclose in a radio or television advertisement the full legal name of the licensed salesperson or the service agreement company.

(c) Does not fully identify the soliciting licensed salesperson's full legal name and license number when the salesperson begins, and the soliciting salesperson's telephone number when the salesperson concludes, each outbound telephone solicitation. For the purposes of this paragraph, the actual telephone number of the salesperson may be the number on file with the department or the number at which the salesperson may be contacted.

Section 7. Subsection (11) of section 775.15, Florida Statutes, is amended to read:

775.15 Time limitations; general time limitations; exceptions.—

(11) A prosecution for a felony violation of s. 440.105 or s. 817.234 ~~ss. 440.105 and 817.234~~ must be commenced within 5 years after the violation is committed.

Section 8. Subsection (5) of section 817.234, Florida

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Statutes, is amended to read:

817.234 False and fraudulent insurance claims.—

(5)(a) Any insurer damaged as a result of a violation of any provision of this section when there has been a criminal adjudication of guilt shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorney ~~attorneys'~~ fees, at the trial and appellate courts.

(b) If an insurer damaged as a result of a violation of any provision of this section has reported the possible fraudulent insurance act to the Division of Investigative and Forensic Services pursuant to s. 626.9891 and if there has been a criminal adjudication of guilt, the insurer is entitled to recover reasonable investigation and litigation expenses, including attorney fees, at the trial and appellate courts.

Section 9. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

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

Sanders, Michelle

From: Wells, Elizabeth
Sent: Monday, February 28, 2022 8:47 AM
To: Sanders, Michelle
Subject: FW: Copy of Insurance Estimate Final.xlsx
Attachments: Copy of Insurance Estimate Final.xlsx

Elizabeth Wells
Legislative Analyst
Senate Appropriations Subcommittee on Transportation, Tourism and Economic Development
850-487-5140

From: Callaway, Pace <PaceCallaway@flhsmv.gov>
Sent: Monday, February 28, 2022 8:42 AM
To: Wells, Elizabeth <Elizabeth.Wells@laspbs.state.fl.us>
Subject: FW: Copy of Insurance Estimate Final.xlsx

I believe this is what you're looking for.

Pace

From: Callaway, Pace
Sent: Friday, January 28, 2022 10:13 AM
To: Anita Hicks <Anita.Hicks@laspbs.state.fl.us>
Cc: Jacobs, Kevin <KevinJacobs@flhsmv.gov>; Dickerson-Walden, Boyd <BoydDickerson-Walden@flhsmv.gov>; Samuel, Terrence <TerrenceSamuel@flhsmv.gov>
Subject: Copy of Insurance Estimate Final.xlsx

Anita,

I've attached the estimate costs for the insurance portion of the mobile DL. We estimate a non-recurring cost of $1.4 million and a recurring cost of $200K. As we spoke about earlier, if DFS can pick up the non-recurring portion, Highway Safety could pick up the recurring cost in our contracted services category for ISA. We would just need the budget authority to do so.

Let us know if you have any questions.

Thanks!

Pace Callaway
Chief Financial Officer
Office of Financial Management
Dept. of Highway Safety & Motor Vehicles
Office - 850-617-3151
Cell – 850-509-7007

This email originated from a Florida Department of Highway Safety and Motor Vehicles email address.
Always use caution when clicking links or opening attachments unless you recognize the sender and know the content is safe.
Please Note: Florida has very broad public records laws. Unless a statutory exemption applies, emails are subject to public disclosure.
This email has been scanned by the Symantec Email Security.cloud service.

DFS Portion

Total Non Recurring Cost	**$1,413,270**

HSOTF Portion

Total Recurring Cost	**$200,000**

Current recurring cost is an estimate for increase in maintenance fees plus recurring messaging costs
We would use contracted services for the Highway Safety Recurring portion.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 3, 2022

I respectfully request that **Senate Bill #1292**, relating to Fraud Prevention, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Please let me know if you have any questions.

Sincerely,

Joe Gruters

Cc: Tim Sadberry, Staff Director
Jamie DeLoach, Deputy Staff Director
John Shettle, Deputy Staff Director
Ashley Urban, General Counsel
Alicia Weiss, Committee Administrative Assistant

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. 23, 2022
Meeting Date

Appropriations
Committee

CS/SB 1292
Bill Number or Topic

895176 - PCS
Amendment Barcode (if applicable)

Name Reggie Garcia

Phone 850-933-7150

Address PO Box 11069
Street

Email reggiegarcialaw@icloud.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 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)

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

2/28/22
Meeting Date

Appropriations
Committee

1292
Bill Number or Topic

Amendment Barcode (if applicable)

Name Chase Mitchell

Phone 850 413 5939

Address PL 11 The Capitol
Street

Email Chase.Mitchell@myfloridacfo.com

Tallahassee FL 32399
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
CFO Jimmy Patronis

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/28/2022
Meeting Date

Appropriations
Committee

SB 1292
Bill Number or Topic

Amendment Barcode (if applicable)

Name Tasha Carter

Phone (850) 413-2868

Address 200 East Gaines Street
Street

Tallahassee, Florida 32399
City State Zip

Email tasha.carter@myfloridacfo.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: Office of the Insurance Consumer Advocate

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

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

2/28/2022
Meeting Date

CS/SB 1292
Bill Number or Topic

Appropriations
Committee

Amendment Barcode (if applicable)

Name Paul HANDERHAN

Phone 561 704 0428

Address 120 S. Monroe Street
Street

Email Paul@rambaconsulting.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:
FAIR

☐ 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 Appropriations

BILL:	CS/CS/SB 1302
INTRODUCER:	Appropriations Committee; Regulated Industries Committee; and Senators Burgess and Perry
SUBJECT:	Criminal History Records
DATE:	March 2, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Kolich	Harkness	ACJ	**Recommend: Favorable**
3.	Kolich	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1302 amends section 943.0595, Florida Statutes, to expand provisions relating to the eligibility of automatic sealing of criminal history records by providing that the *court* must seal criminal history records that are eligible for automatic sealing. Currently, the Florida Department of Law Enforcement (FDLE) is the only entity required to automatically seal certain criminal history records under this section.

Additionally, the bill expands the process and effect of automatic sealing by directing the *clerk of court*, upon the disposition of a criminal case resulting in a criminal history record eligible for automatic sealing, to seal the criminal history record. Currently, the clerk of court transmits certified copies of such dispositions to the FDLE, and the FDLE seals the criminal history record.

The bill provides that the court may disclose a record it has automatically sealed in the same manner as a record sealed pursuant to section 943.059, Florida Statutes, relating to court ordered sealing.

The bill may have an indeterminate negative fiscal impact on the clerks of court and the courts. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2022.

II. Present Situation:

Sealing of Criminal History Records

A criminal history record is any nonjudicial record maintained by a criminal justice agency[1] containing criminal history information.[2] Criminal history information is information collected by criminal justice agencies on persons, which consists of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges and disposition thereof. [3]

A criminal history record of an adult is generally a public record unless sealed or expunged.[4] The "sealing of a criminal history record" means the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein.[5]

Automatic Sealing of Criminal History Record

The FDLE must automatically seal a criminal history record that does not result from an indictment, information, or other charging document for a forcible felony[6] or for other specified offenses,[7] if:

- An indictment, information, or other charging document was not filed or issued in the case giving rise to the criminal history record;
- An indictment, information, or other charging document was filed in the case giving rise to the criminal history record, but was dismissed or nolle prosequi by the state attorney or statewide prosecutor or was dismissed by a court of competent jurisdiction;[8]
- A not guilty verdict was rendered by a judge or jury;[9] or

---

[1] Section 943.045(11), F.S., provides that "criminal justice agency" means: a court; the FDLE; the Department of Juvenile Justice; the protective investigations component of the Department of Children and Families, which investigates the crimes of abuse and neglect; any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice; or the investigations component of the Department of Financial Services which investigates the crimes of fraud and official misconduct in all public assistance given to residents of this state or provided to others by this state.
[2] Section 943.045(6), F.S.
[3] Section 943.045(5), F.S. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system.
[4] Section 943.045(16), F.S. The "expunction of a criminal history record" means the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order. Criminal history records in the custody of the department must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for sealing or expunction, or for purposes of recreating the record in the event an order to expunge is vacated by a court of competent jurisdiction
[5] Section 943.045(19), F.S.
[6] Section 776.08, F.S., provides that a "forcible felony" means treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.
[7] Specified offenses include certain sexual offenses provided in s. 943.0435(1)(h)1.a.(I), F.S.
[8] Section 943.0595(2)(a)2., F.S., provides a person is not eligible for automatic sealing if the dismissal was pursuant to ss. 916.145 or 985.19, F.S., relating to adjudication of incompetency to proceed.
[9] Section 943.059(2)(a)3., F.S., provides a person is not eligible for automatic sealing under this section if the defendant was found not guilty by reason of insanity.

- A judgment of acquittal was rendered by a judge.[10]

There is no limitation on the number of times a person may obtain an automatic sealing for an eligible criminal history record.[11] The clerk of court must transmit a certified copy of the disposition of the criminal history record to the FDLE, which must seal the record. The automatic sealing of such records does not require sealing by the court or other criminal justice agencies, or that such record be surrendered to the court, and such record must continue to be maintained by the department and other criminal justice agencies.[12]

Records automatically sealed by the FDLE have the same effect, and the department may disclose such record in the same manner as a record ordered sealed by the court under s. 943.059, F.S.[13]

Court Ordered Sealing

A person seeking the court ordered sealing of a record must first obtain a certificate of eligibility from the FDLE, and file a petition with the court for an order to seal his or her criminal history record.[14] The FDLE must issue a certificate of eligibility if the person meets the statutory eligibility requirements,[15] submits a certified copy of the disposition of charge to which the petition pertains, and remits a $75 processing fee to the FDLE.[16]

The court, at its sole discretion, may deny a petition to seal a criminal history record.[17] If the court grants the petition, the clerk of court must certify copies of the order to the appropriate state attorney, statewide prosecutor and arresting agency, and any other agency that the records of the court reflect has received the criminal history record from the court.[18]

A criminal history record that is ordered sealed, is confidential and exempt from Florida's public records laws.[19] The following persons and entities may access a sealed criminal history record:

- The subject of the record;
- His or her attorney;

[10] Section 943.0595(2), F.S.
[11] Section 943.0595(2)(b), F.S.
[12] Section 943.0595(3), F.S.
[13] Section 943.0595(3)(c), F.S.
[14] Section 943.059, F.S.
[15] Section 943.059(1), F.S., provides that a person is eligible to petition a court to seal a criminal history record when: The criminal history record is not ineligible for court-ordered sealing under s. 943.0584, F.S; the person has never, before the date the application for a certificate of eligibility is filed, been adjudicated guilty in this state of a criminal offense or been adjudicated delinquent in this state for committing any felony or any of the specified misdemeanor offenses, unless the record of such adjudication for delinquency has been expunged pursuant to s. 943.0515, F.S.; the person has not been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains; the person is no longer under court supervision for the arrest or alleged criminal activity to which the petition to seal pertains; or the person has never secured a prior sealing or expunction of a criminal history record under ss. 943.059 or 943.0585, F.S.
[16] Section 943.059(2), F.S.
[17] Section 943.059(5), F.S.
[18] Section 943.059(5), F.S. The arresting agency is responsible for forwarding the order to any other agency to which the arresting agency disseminated the criminal history record information. The FDLE must forward the order to seal to the Federal Bureau of investigation.
[19] Sections 943.059(6) and 119.07(1), F.S.; Art. I, s. 24(a), Fla. Const.

- Criminal justice agencies for criminal justice purposes, which include conducting a criminal history background check for approval of firearms purchases or transfers;
- Judges in the state courts system for assisting in their case-related decision-making responsibilities; and
- Certain enumerated entities[20] for licensing, access authorization, and employment purposes.[21]

If a criminal history record is sealed, the subject of the record may lawfully deny or fail to acknowledge the arrests covered by the sealed record, with exceptions for certain state employment positions, professional licensing purposes, purchasing a firearm, applying for a concealed weapons permit, seeking expunction, or if the subject is a defendant in a criminal prosecution.[22]

III. Effect of Proposed Changes:

The bill amends s. 943.0595, F.S., to expand provisions relating to the eligibility of automatic sealing of criminal history records by providing that the *court* must seal criminal history records eligible for automatic sealing.

Additionally, the bill expands the process and effect of automatic sealing by directing the *clerk of court*, upon the disposition of a criminal case resulting in a criminal history record eligible for automatic sealing, to seal the criminal history record.

The bill provides that the court may disclose a record it has automatically sealed in the same manner, as a record sealed pursuant to s. 943.059, F.S., relating to court ordered sealing.

The bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[20] Enumerated entities include criminal justice agencies, The Florida Bar, Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, Department of Juvenile Justice, the Department of Education, a district school board, a university laboratory school, a charter school, a private or parochial school, a local governmental entity that licenses child care facilities, the Division of Insurance Agent and Agency Services within the Department of Financial Services, and the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services.
[21] Section 943.059(6), F.S.
[22] *Id.*

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have an indeterminate negative fiscal impact on the clerks of court and the courts. The bill may result in an increased workload to the clerks of court by directing them, upon the disposition of a criminal case resulting in a criminal history record eligible for automatic sealing, to seal the criminal history record. The bill may also result in an increased workload to the courts by requiring that they must seal criminal history records eligible for automatic sealing.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill directs the court and the clerk of court to automatically seal a criminal history record eligible for automatic sealing under s. 943.0595, F.S. The Supreme Court of Florida has held that legislation directing the court to expunge *judicial* records was unconstitutional, and stated that "the judicial department of government has the inherent power and duty to keep records of its proceedings." *Johnson v. State*, 336 So. 2d 93 (1976). The definition of "criminal history record," is clear that it is a *nonjudicial* record. It is unclear what *nonjudicial* record the court, or clerk of court as extension of the court, may have in its possession.

VIII. Statutes Affected:

This bill substantially amends section 943.0595 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on February 28, 2022:
The committee substitute:

- Removes language related to general licensing and court ordered sealing.
- Amends sections relating to automatic sealing of a criminal history record to specify that the court and clerk of court must automatically seal a criminal history record that is eligible for automatic sealing.

CS by Regulated Industries on January 18, 2022:
The committee substitute:

- Extends the requirements in the bill to license applications submitted to the Department of Business and Professional Regulation (DBPR). The effect of the bill is limited to boards within the DBPR. Some professions are licensed by DBPR and not boards.
- Clarifies that the DBPR or its boards or agents may not use, distribute, or disseminate the specified criminal history information by removing an incorrect reference to "political subdivisions."
- Expands the license review process in the bill to include all of an applicant's criminal history that is not exempted by the bill. The bill limited the review process to applicants with a felony criminal history.
- Removes from the bill the requirement that the DBPR or board, when it denies a license application solely or in part on the basis of the applicant's prior criminal record, give the applicant written notice of the applicant's eligibility for other licenses or professions and the earliest date the applicant may reapply for a license.

B. Amendments:

None.

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

761772

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2022	.	
	.	
	.	
	.	

The Committee on Appropriations (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (2) and (3) of section 943.0595, Florida Statutes, are amended to read:

943.0595 Automatic sealing of criminal history records.—

(2) ELIGIBILITY.—

(a) The department and a court shall automatically seal a criminal history record that does not result from an indictment,

761772

information, or other charging document for a forcible felony as defined in s. 776.08 or for an offense enumerated in s. 943.0435(1)(h)1.a.(I), if:

1. An indictment, information, or other charging document was not filed or issued in the case giving rise to the criminal history record.

2. An indictment, information, or other charging document was filed in the case giving rise to the criminal history record, but was dismissed or nolle prosequi by the state attorney or statewide prosecutor or was dismissed by a court of competent jurisdiction. However, a person is not eligible for automatic sealing under this section if the dismissal was pursuant to s. 916.145 or s. 985.19.

3. A not guilty verdict was rendered by a judge or jury. However, a person is not eligible for automatic sealing under this section if the defendant was found not guilty by reason of insanity.

4. A judgment of acquittal was rendered by a judge.

(b) There is no limitation on the number of times a person may obtain an automatic sealing for a criminal history record described in paragraph (a).

(3) PROCESS FOR AND EFFECT OF AUTOMATIC SEALING.—

(a) Upon the disposition of a criminal case resulting in a criminal history record eligible for automatic sealing under paragraph (2)(a), the clerk of the court shall <u>seal the criminal history record and shall</u> transmit a certified copy of the disposition of the criminal history record to the department, which shall seal the criminal history record upon receipt of the certified copy.

761772

(b) Automatic sealing of a criminal history record does not require sealing by ~~the court or other~~ criminal justice agencies, or that such record be surrendered to the court, and such record shall continue to be maintained by the department and other criminal justice agencies.

(c) Except as provided in this section, automatic sealing of a criminal history record shall have the same effect, and the department and a court may disclose such a record in the same manner, as a record sealed under s. 943.059.

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 criminal history records; amending s. 943.0595, F.S.; requiring a court to automatically seal certain criminal history records that meet specified criteria; requiring the clerk of the court to seal certain criminal history records; conforming provisions to changes made by the act; providing an effective date.

By the Committee on Regulated Industries; and Senator Burgess

580-02079-22 20221302c1

A bill to be entitled

An act relating to criminal history information; amending s. 455.213, F.S.; prohibiting an applicable board, or the Department of Business and Professional Regulation if there is no such board, from inquiring into or considering the conviction history of an applicant for licensure until it is determined that the applicant is otherwise qualified; revising professions for licensure eligibility; removing a provision relating to licensure of other professions offered to certain inmates under certain circumstances; prohibiting the use of a conviction, or other adjudication, for a crime before the date an application is received as being grounds for denial of a license; authorizing an applicable board, or the department if there is no board, to consider an applicant's criminal history only if such criminal history directly relates to the practice of the applicable profession; prohibiting the use, distribution, and dissemination of specified criminal records; removing a provision authorizing an applicable board to consider an applicant's criminal history if the history has been found to relate to good moral character; prohibiting the applicable board, or the department if there is no board, from denying an application for licensure of a person based solely or in part on an applicant's criminal history; providing an exception; providing requirements for determining if such criminal history directly relates

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

580-02079-22 20221302c1

to the practice of the applicable profession; providing requirements if the applicable board, or the department if there is no board, intends to deny an application for license based solely or in part on the applicant's prior conviction; amending s. 943.059, F.S.; providing requirements for court-ordered sealing of certain records that were automatically sealed by the Department of Law Enforcement under specified provisions; providing an effective date.

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

Section 1. Present paragraphs (b) through (e) of subsection (3) of section 455.213, Florida Statutes, are redesignated as paragraphs (c) through (f), respectively, a new paragraph (b) and paragraph (g) are added to that subsection, and paragraph (a) and present paragraph (b) of that subsection are amended, to read:

455.213 General licensing provisions.—

(3)(a) Notwithstanding any other law, the applicable board, or the department if there is no board, shall use the process in this subsection for review of an applicant's criminal record to determine his or her eligibility for licensure.

(b) The applicable board, or the department if there is no board, may not inquire into or consider the conviction history of an applicant for licensure until the applicant is determined to be otherwise qualified for licensure. ~~as:~~

~~1. A barber under chapter 476;~~

~~2. A cosmetologist or cosmetology specialist under chapter~~

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

~~477.~~

~~3. Any of the following construction professions under chapter 489:~~

~~a. Air conditioning contractor;~~

~~b. Electrical contractor;~~

~~c. Mechanical contractor;~~

~~d. Plumbing contractor;~~

~~e. Pollutant storage systems contractor;~~

~~f. Roofing contractor;~~

~~g. Sheet metal contractor;~~

~~h. Solar contractor;~~

~~i. Swimming pool and spa contractor;~~

~~j. Underground utility and excavation contractor; or~~

~~k. Other specialty contractors; or~~

~~4. Any other profession for which the department issues a license, provided the profession is offered to inmates in any correctional institution or correctional facility as vocational training or through an industry certification program.~~

(c)1.~~(b)1.~~ A conviction, or any other adjudication, for a crime ~~more than 5 years~~ before the date the application is received by the applicable board, or the department if there is no board, may not be grounds for denial of a license ~~specified in paragraph (a)~~. For purposes of this subsection ~~paragraph~~, the term "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld. This subparagraph ~~paragraph~~ does not limit the applicable board, or the department if there is no board, from considering an applicant's criminal history that includes a crime listed in s. 775.21(4)(a)1. or s. 776.08 at any time, but

only if such criminal history has been found to directly relate to the practice of the applicable profession.

2. Notwithstanding subparagraph 1., the following criminal history may not be used, distributed, or disseminated by the department or a board or its agents in connection with an application for licensure:

a. An arrest without a valid conviction.

b. Convictions that have been sealed, dismissed, or expunged.

c. Misdemeanor convictions without incarceration.

d. Noncriminal infractions.

(g) The applicable board, or the department if there is no board, may not deny an application for a license solely or in part on the basis of an applicant's criminal history unless the criminal history directly relates to the practice of the applicable profession for which the license is sought or held.

1. In determining if a criminal history directly relates to the practice of the applicable profession for which the license is sought or held, the applicable board, or the department if there is no board, shall consider:

a. The nature and seriousness of the conviction.

b. Whether the conviction directly relates to the practice of the applicable profession for which the license is sought or held.

c. Whether the duties and responsibilities of the profession provide the opportunity for the same or a similar offense to occur.

d. Whether circumstances leading to the offense for which the person was convicted will recur in the profession.

e. The age of the person at the time the offense was committed.

f. The length of time since the conviction.

g. All circumstances relative to the offense, including mitigating circumstances or social conditions surrounding the commission of the offense.

h. Evidence of mitigation or rehabilitation and the applicant's current ability to practice the profession competently in accordance with the actual practice of the profession.

2. If the applicable board, or the department if there is no board, intends to deny an application for a license solely or in part on the basis of the applicant's criminal history, it must notify the applicant in writing of its intent before making a final decision. Such notice must do all of the following:

a. Identify the reasons for the potential denial.

b. Provide a copy of any criminal history record.

c. Provide examples of evidence of mitigation or rehabilitation and the current ability to practice the profession competently in accordance with the actual practice of the profession, which the applicant may voluntarily provide.

(I) An applicant who has been convicted of an offense that directly relates to the practice of the applicable profession for which a license is sought may not be denied the license if he or she can show evidence of mitigation or rehabilitation and the current ability to practice the profession competently in accordance with the actual practice of the profession.

(II) The applicant shall have 10 business days after issuance of the notice to respond with any information,

including challenging the accuracy of the information and submitting evidence of mitigation or rehabilitation and his or her current ability to practice the profession competently in accordance with the actual practice of the profession.

(III) Evidence of mitigation or rehabilitation and the applicant's current ability to practice the profession competently in accordance with the actual practice of the profession may be established by:

(A) Proof of compliance with the terms and conditions of probation or parole; or

(B) Other evidence, including, but not limited to, letters of reference or program or education certificates.

(IV) If an applicable board, or the department if there is no board, denies an application for a license solely or in part on the basis of the applicant's criminal history, it must notify the applicant in writing of all of the following:

(A) Final denial.

(B) Appeal process ~~The applicable board may consider the criminal history of an applicant for licensure under subparagraph (a)3. if such criminal history has been found to relate to good moral character~~.

Section 2. Present paragraph (b) of subsection (2) of section 943.059, Florida Statutes, is redesignated as paragraph (c), and paragraph (f) is added to subsection (1) and a new paragraph (b) is added to subsection (2) of that section, to read:

943.059 Court-ordered sealing of criminal history records.—

(1) ELIGIBILITY.—A person is eligible to petition a court to seal a criminal history record when:

(f) Notwithstanding paragraphs (b) and (e), if a criminal history record has been automatically sealed pursuant to s. 943.0595 and the subject of the sealed record presents a record of the sealing by the department described in paragraph (2)(b) to the court, the court shall grant the sealing of the criminal history record.

(2) CERTIFICATE OF ELIGIBILITY.—Before petitioning the court to seal a criminal history record, a person seeking to seal a criminal history record must apply to the department for a certificate of eligibility for sealing. The department shall adopt rules relating to the application for and issuance of certificates of eligibility for sealing.

(b) Notwithstanding paragraph (a), the department shall also issue a certificate of eligibility for sealing to a person who is the subject of a criminal history record that has been sealed by the department pursuant to s. 943.0595. This certificate must indicate that the record has been sealed by the department and is only valid for court-ordered sealing under paragraph (1)(f) of a record already sealed pursuant to s. 943.0595.

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 Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 17, 2022

I respectfully request that **Senate Bill #1302**, relating to Criminal History Records, 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

APPEARANCE RECORD

Deliver both copies of this form to
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2/28/22
Meeting Date

Approps
Committee

SB 1302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Subash Kateel - Alliance for Safety & Justice

Phone

Address 2847 Burwood
Street

Email

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

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2/28/22
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Appropriations
Committee

1302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Adam Basford

Phone 850-224-7173

Address 516 N Adams
Street

Email abasford@aif.com

Tallahassee | FL | 32301
City | *State* | *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Associated Industries of 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

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2/28/22
Meeting Date

APPROPRIATIONS
Committee

1302
Bill Number or Topic

Amendment Barcode (if applicable)

Name AARON WAYT "WAIT"
FL ASSN OF CRIM DEFENSE LAWYERS

Phone (407) 435-3194

Address
Street

Email

City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

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2/28/22
Meeting Date

CS/SB 1302
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Michelle Jackson

Phone 727-379-7927

Address 37240 Lock St.
Street

Email m.jackson916@gmail

Dade City FL 33523
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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Meeting Date	Bill Number or Topic
	CS/SB 1302
Committee	**Amendment Barcode (if applicable)**

Name MARGARITA ROMO **Phone** 352-206-7763

Address 37240 Lock St. **Email** Romo1936@gmail.com
Street

Dade City FL. 33523
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)

2/28/22
Meeting Date

The Florida Senate
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SB 1302
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Subash Kateel

Phone 347 524 3374

Address 2847 Burwood Ave
Street

Email

Orland 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:

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S-001 (08/10/2021)

The Florida Senate

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02-28-22
Meeting Date

SB 1302
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Nadeska Concha

Phone 813-482-4161

Address 3335 Chapel Creek Circle
Street

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Wesley Chapel FL 33544
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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2/28/2022
Meeting Date

Approps
Committee

1302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Karen Woodall

Phone

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Street

Email fcfep@yahoo.com

Tallahassee, FL 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
FL Center for Fiscal & Economic Policy

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

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

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S-001 (08/10/2021)

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2/28/2022
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Approps
Committee

1302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Donn Scott, JR

Phone

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Street

Email donn.scottjr@splcenter.org

Tallahassee FL 32302
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: SPLC Action Fund

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

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

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S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1382
INTRODUCER:	Appropriations Committee; Finance and Tax Committee; and Senator Gruters
SUBJECT:	Tax Administration
DATE:	February 28, 2022 REVISED: 3/3/22

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	**Favorable**
2.	Covin	Babin	FT	**Fav/CS**
3.	Covin	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1382 makes various changes to statutes relating to the Department of Revenue (Department). The bill largely amends details related to the Department's rights and obligations before, during, and after an audit.

Regarding audits, the bill:

- Clarifies activities the Department may engage in during the 60-day waiting period between notifying the taxpayer of its intent to audit and beginning the audit;
- Excludes from evidence during litigation documents withheld during an audit;
- Provides that, in certain situations, the failure of a taxpayer to provide documents creates a presumption that the resulting proposed final agency action by the Department is correct;
- Expands the Department's authority to serve subpoenas in certain situations;
- Revises several situations when the time limit to complete an audit is tolled;
- Allows the Department to immediately suspend a dealer's resale certificate during audits relating to the sale of alcoholic beverages;
- Allows the Division of Alcoholic Beverages and Tobacco within the Department of Business and Professional Regulation to suspend or revoke a dealer's license if the dealer's resale certificate has been suspended;
- Allows the Department to reopen a final assessment for the purpose of adjusting liability under certain circumstances;

- Allows the Department to include all taxes, penalties, interest, costs, and fees authorized by law in a garnishment or levy; and
- Provides rulemaking and emergency rulemaking authority.

The bill also makes changes including clarifications, corrections, deletions of obsolete language, and cross-reference corrections.

The Revenue Estimating Conference has not determined the fiscal impact of the bill. Staff estimates that the bill will increase General Revenue Fund receipts by an indeterminate amount in Fiscal Years 2022-2023 through 2026-2027.

The bill takes effect July 1, 2022.

II. Present Situation:

The present situation for each issue is described below in Section III, Effect of Proposed Changes.

III. Effect of Proposed Changes:

Sections 1 & 2 – Exclusion of Records in Litigation

Present Situation: Current law provides that a taxpayer may contest the legality of any assessment or denial of any refund of tax, fee, surcharge, permit, interest, or penalty under the Department of Revenue's (Department) purview by filing an action in circuit court, or alternatively, the taxpayer may file a petition under the applicable provisions of ch. 120, F.S.[1]

Taxpayers who do not provide records during an audit as required by law are subject to the Department issuing an estimated assessment. In litigation, some taxpayers will selectively provide records to challenge the estimated assessment even though the estimate was created because of the taxpayer's own willful non-compliance with records laws.[2]

Proposed Changes: The bill amends ss. 72.011(1)(c) and 120.80, F.S., to provide that a taxpayer may not submit records pertaining to an assessment or refund claim as evidence in any proceeding under s. 72.011, F.S., or any administrative proceeding under s. 120.80, F.S., if those records were available to, or required to be kept by, the taxpayer and were not timely provided to the Department when requested during the audit or protest period and before submission of a petition for hearing pursuant to ch. 120, F.S., or the filing of an action under s. 72.011(1)(a), F.S., unless the taxpayer demonstrates good cause for its failure to provide the records to the Department. The bill specifies that good cause may include, but is not limited to, circumstances when a taxpayer was unable to originally provide records under extraordinary circumstances.[3]

[1] Section 72.011(1), F.S.
[2] *Department of Revenue, 2022 Agency Legislative Bill Analysis, SB 1382*, available at http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=33394 (last accessed Feb. 4, 2022).
[3] The term "extraordinary circumstances" means "the occurrence of events beyond the control of the taxpayer, such as, but not limited to, the death of the taxpayer, acts of war or terrorism, natural disasters, fire, or other casualty, or the nonfeasance or misfeasance of the taxpayer's employees or representatives responsible for compliance with s. 125.0104, s. 125.0108, or chapter 212." Section 213.21(10)(d)2., F.S.

Sections 3 & 9 – Pre-Audit Preparation

Present Situation: The Department is required to provide notification to a taxpayer of an audit at least 60 days before the audit begins.[4] This 60-day period gives the taxpayer time to gather and prepare records, meet with their accountant, or secure the assistance of a professional. Some practitioners have argued that the Department can have no contact with the taxpayer during this 60-day period, even to answer questions asked by the taxpayer. It has also been argued that the Department must refrain from reviewing its own records or records voluntarily provided by the taxpayer prior to the end of the 60-day period or preparing internally for the audit.[5]

Proposed Changes: The bill creates ss. 202.34(4)(f), and 212.13(5)(f), F.S., to clarify activities the Department may engage in during the 60-day period. The bill provides that the Department may:

- Confirm receipt of the notification of intent to audit;
- Answer any questions raised by the taxpayer or taxpayer representative;
- Confirm date and location of the audit;
- Confirm the way the taxpayer would like to provide records;
- Discuss the scope of the audit;
- Review records voluntarily provided by the taxpayer;
- Review records already in the Department's possession; and
- Review publicly available information.

If the taxpayer has not previously waived the 60-day period notice and believes the Department has commenced the audit before the 61st day, the taxpayer must object in writing to the Department before the issuance of an assessment or else the objection is waived. If the objection is not waived and it is determined the audit was commenced before the 61st day after the issuance of the notice of intent to audit, the 1-year tolling period[6] is considered lifted for the number of days equal to the difference between the date the audit commenced and the 61st day after the date of the Department's notice of intent to audit.

The bill provides that the Department may adopt rules to administer ss. 202.34 and 212.13, F.S.

Sections 4, 5, 7, 10, 11, 16, and 19 – Estimates, Delivery of Administrative Subpoenas, and Extension of Tolling

Present Situation: The Department has the statutory authority to issue an "administrative subpoena" to compel production of records and documents when taxpayers refuse to provide books and records, despite the legal requirement to do so.[7] However, this tool is rarely used because a court proceeding on the administrative subpoena will cause the Department to fail other statutory deadlines and may run out the statute of limitations on the audit assessment.

[4] Sections 202.34 and 212.13, F.S.
[5] *Supra* Note 2
[6] Section 213.345, F.S.
[7] Section 202.36(4), F.S.

Instead, the Department uses its authority to issue an estimated assessment which results in the use of additional resources for both the taxpayer and the Department in resolving disputed issues.[8]

Proposed Change: The bill amends ss. 202.36(4)(a), 206.14(4), 211.125(3)(b)3., 212.14(7)(a), and 220.735(4), F.S., to provide that the failure of a taxpayer to provide documents available to, or required to be kept by, the taxpayer and requested by a subpoena creates a rebuttable presumption that the resulting proposed final agency action by the Department, as to the requested documents, is correct and that the requested documents not produced by the taxpayer would be adverse to the taxpayer's position as to the proposed final agency action. The Department may make an assessment from an estimate based upon the best information available if a taxpayer fails to provide documents requested by a subpoena. The Department is required to inform the taxpayer of the reason for the estimate and certain related information. The information is considered prima facie correct, and the taxpayer has the burden of showing any error in it.

For purposes of ss. 202.36 and 212.14, F.S., the presumption and authority to create estimates are not triggered merely because a taxpayer or its representative requests a conference to negotiate the production of a sample of records demanded by a subpoena.

Present Situation: For the purpose of administering and enforcing the provisions of the revenue laws of this state, the Department's Executive Director, or any of his or her assistants designated in writing by the Executive Director, is authorized to serve subpoenas and subpoenas duces tecum issued by the state attorney relating to investigations concerning the taxes enumerated in s. 213.05, F.S.[9]

Proposed Change: Section 11 creates s. 213.051(2), F.S. to provide that in addition to the procedures for service prescribed by ch. 48, F.S., the department may serve subpoenas it issues pursuant to ss. 202.36, 206.14, 211.125, 212.14, and 220.735, F.S., upon any business registered with the Department at the address on file with the Department if it received correspondence from the business from that address within 30 days before issuance of the subpoena or if the address is listed with the Department of State Division of Corporations as a principal or business address. If a business' address is not in this state, service is made upon proof of delivery by certified or registered mail or under the notice provisions of s. 213.0537, F.S.

Present Situation: The statute of limitations for assessment and refund purposes is tolled for a period of 1 year if the Department has issued a notice of intent to conduct an audit or investigation of a taxpayer's account within the applicable period of time provided by s. 95.091(3) or 215.26(2), F.S.[10]

Proposed Changes: Section 16 amends s. 213.345, F.S., to provide that the 1-year period is tolled upon receipt of written objections to the subpoena and for the entire pendency of any action that seeks an order to enforce compliance with or to challenge any subpoena issued by the

[8] *Supra* Note 2
[9] Section 213.051, F.S.
[10] Section 213.345, F.S.

Department compelling the attendance and testimony of witnesses and the production of books, records, written materials, and electronically recorded information.

The bill further provides that if the Department issues a notice explaining its audit findings under s. 213.34(2)(a), F.S., based on an estimate because the taxpayer has failed or refuses to provide records, the audit will be deemed to have commenced for purposes of s. 213.345, F.S. In the event the Department issues an assessment beyond the tolling period, the assessment will be considered late and the assessment shall be reduced by the amount of those taxes, penalties, and interest for reporting periods outside of the limitations period, as modified by any other tolling or extension provisions.

Section 6 – Pollutants Tax Registration Fees

Present Situation: An entity must pay a $30 registration fee when requesting a pollutants tax license.[11] However, these registration fees were previously repealed.[12]

Proposed Change: Section 6 amends s. 206.9931, F.S., to remove obsolete language related to pollutants tax registration fees.

Section 8 – Affidavit for Non-Resident Purchasers of Boats and Aircrafts

Current Situation: Nonresident purchasers of boats and aircraft are required to sign an affidavit attesting that they have read the provisions of s. 212.05, F.S., in its entirety, in order to claim an exemption from sales tax. Section 212.05, F.S., is lengthy and includes many provisions that are not applicable to the purchaser of a boat or aircraft.

Proposed Changes: Section 8 amends s. 212.05(1)(a)2.d., F.S., by removing the requirement that a purchaser attests to having read statutory provisions and replacing that language with the requirement that the nonresident purchaser complete an affidavit that affirms that the nonresident purchaser qualifies for exemption from sales tax pursuant to s. 212.05(1)(a)2., F.S., and attesting that the nonresident purchaser will provide the documentation required to substantiate the exemption claimed under s. 212.05(1)(a)2., F.S.

Section 9 – Records related to Alcohol and Tobacco Dealers

Present Situation: Dealers must maintain records as required by the Department for the reasonable administration of ch. 212, F.S.[13] During sales tax audits by the Department, some dealers selling alcoholic beverages and tobacco advise Department auditors that they have no records as to purchases, sales, or tax collected for these regulated products. Florida tax and alcohol and beverage laws require dealers to maintain and produce certain records. Without records, the Department is unable to conduct the audit and must resort to estimating the dealer's compliance.[14]

[11] Section 206.9931, F.S.
[12] Chapter 2017-36, L.O.F.
[13] Section 212.13(2), F.S.
[14] *Supra* Note 2.

Proposed Changes: Section 9 creates s. 212.13(2)(b), F.S., which will allow the Department, during the course of an audit, to suspend a dealer's privilege to hold a resale certificate and purchase products tax exempt for resale when a dealer[15] asserts that they have no records or refuse to provide records related to their purchase and/or sale of alcoholic beverages and tobacco. The dealer would still be able to purchase non-alcohol and non-tobacco products and take a credit for taxes paid against sales tax collected and remitted on the resale of the products. The Department is required to notify the Division of Alcoholic Beverages and Tobacco within the Department of Business and Professional Regulation (Division) when a dealer's resale certificate is suspended and to publish a list of such dealers. The bill authorizes the Division to suspend a dealer's license if the dealer's resale certificate was suspended in the course of the dealer's first audit, or to revoke the dealer's license if the dealer's resale certificate was suspended and the audit was not the dealer's first audit before the Department. The bill requires the Division to lift a suspension of the license and the Department to lift a suspension of a resale certificate if the dealer takes certain actions. The bill requires the Division to include notice of such suspension in its license verification database or to provide a link to the Department's publish list from the Division's license verification page. A transferor is prohibited from accepting orders from and delivering alcoholic beverages to a dealer whose resale certificate has been suspended within 7 days after the date on which the dealer is added to the Department's published list, and a transferor who sells alcoholic beverages to such a dealer is not responsible for any tax, penalty, or interest due if the alcoholic beverages are delivered no more than 7 days after the date of publication of the suspension. The Department may adopt rules to implement s. 212.13(2)(b), F.S.

Section 12 – Confidentiality and Information Sharing

Present Situation: Taxpayer information received by the Department is generally confidential and exempt from public records requirements.[16] This confidential treatment and exemption from public records requirements extends to all information contained in returns, reports, accounts, declarations, investigative reports, and letters of technical advice.[17] The Department is authorized to make confidential information available as specified under Florida law.[18]

Proposed Changes: Section 12 creates s. 213.053(21), F.S., to require the Department to publish a list of dealers whose resale certificates have been suspended pursuant to s. 212.13(2)(b). The bill specifies information that must be contained in the list and requires the Department to update the list daily as needed. The Department is authorized to adopt rules to administer s. 213.053(21), F.S.

Section 13 – Rulemaking Authority and Emergency Rules

Present Situation: The Department has received at least one final order from the Division of Administrative Hearings (DOAH) holding that the Department may not rely on a general grant of rulemaking authority to adopt a rule implementing other specific revenue laws. The First District Court of Appeal has ruled inconsistently on this issue. It appears that a grant of rulemaking

[15] "Dealer" means a dealer, as defined in s. 212.06, F.S., which is licensed under chapter 561.
[16] Section 213.053(2)(a), F.S.
[17] *Id.*
[18] *See* s. 213.053, F.S.

authority and a specific law to be implemented has been confused by some courts to require a grant of specific rulemaking authority.[19] Most revenue laws, especially those predating the administrative procedures act, do not contain specific rulemaking authority for each provision.

Current law provides emergency rulemaking authority for revenue laws effective less than 60 days after the end of the session in which the change enacted.[20] This provision fails to include many revenue laws, which typically have an October 1 effective date or changes with an "upon becoming law" effective date when the bill is not transferred to the Governor from the Legislature for a number of weeks or months, delaying the Department's ability to begin rulemaking.

Proposed Changes: Section 13 amends s. 213.06(2), F.S., to authorize the Executive Director of the Department to adopt emergency rules when the effective date of a legislative change occurs sooner than 120 days after the close of the Legislative Session in which enacted or after the Governor approves or fails to veto the legislative change, whichever is later, and the change affects a tax rate or a collection or reporting procedure which affects a substantial number of dealers or persons subject to the tax change or procedure.

Emergency rules adopted under s. 213.06(2), F.S., are exempt from s. 120.54(4)(c), F.S., remain in effect for 6 months or until replaced by rules adopted under the nonemergency rulemaking procedures of the Administrative Procedure Act, and may be renewed for no more than 3 additional 6-month periods during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

The bill also creates subsection 213.06(3), F.S., which provides that the grants of rulemaking authority in s. 213.06(1) and (2), F.S., are sufficient to allow the Department to adopt rules implementing all revenue laws administered by the Department. Each revenue law administered by the Department is an enabling statute authorizing the Department to implement it, regardless of whether the enabling statute contains its own grant of rulemaking authority.

Section 14 – Informal Compromises and Reopening of Final Assessments

Present Situation: Current Florida law requires taxpayers to maintain and provide records related to tax compliance and to provide those records during audit. While there are no specific statutory penalties imposed solely for failure to keep and provide records, delinquency penalties may be imposed up to 50 percent of any tax due. The Department is required to compromise 25 percent of the delinquency penalty if the Department determines that compliance errors were due to reasonable cause and not willful negligence, willful neglect, or fraud.[21] The Department has discretion to compromise the remaining 25 percent for the same reason. Without records, the Department is forced to estimate any potential liability, and a determination regarding reasonable cause and penalty compromise is nearly impossible.

[19] *Supra* Note 2.
[20] Section 213.06(2), F.S.
[21] Section 213.21(3)(a), F.S.

Current law does not provide the Department with the authority to reopen a final assessment for purposes of adjusting or compromising the liability, other than to resolve the outstanding liability for collectability.[22]

Proposed Changes: Section 14 amends s. 213.21(3)(a), F.S., to provide that a taxpayer's liability for penalties under any of the chapters specified in s. 72.011(1), F.S., greater than 25 percent of the tax must be settled or compromised if the Department determines that the noncompliance is not due to willful negligence, willful neglect, or fraud. In addition, a taxpayer's liability for penalties up to and including 25 percent of the tax may be settled or compromised if the Department determines that reasonable cause exists and the penalties greater than 25 percent of the tax were compromised because the noncompliance is not due to willful negligence, willful neglect, or fraud. The bill creates a rebuttable presumption that a taxpayer's noncompliance is due to willful negligence, willful neglect, or fraud when adequate records as requested by the Department are not provided to the Department before the issuance of an assessment. The presumption may be rebutted by showing reasonable cause why adequate records were not provided or available to the taxpayer.

Section 14 also creates s. 213.21(11), F.S., to provide that following the expiration of time for a taxpayer to challenge an assessment or a denial of a refund as provided in s. 72.011, F.S., the Department may consider a request to settle or compromise any tax, interest, penalty, or other liability under s. 213.21, F.S., if the taxpayer demonstrates that the failure to initiate a timely challenge was due to a qualified event that directly impacted compliance with that section. For purposes of s. 213.21(11), F.S., a qualified event is limited to the occurrence of events during an audit or the expired protest period which were beyond the control of the taxpayer, including, but not limited to, the death or life-threatening injury or illness of the taxpayer or an immediate family member of the taxpayer; the death or life-threatening injury or illness of the responsible party that controlled, managed, or directed the affected business entity; acts of war or terrorism; natural disasters; fire; or other catastrophic loss. The Department may not consider a request received more than 180 days after the expiration of time allowed under s. 72.011, F.S.

The bill creates s. 213.21(12), F.S., to provide that any decision by the Department regarding a taxpayer's request to compromise or settle a liability under this s. 213.21, F.S., is not a final order subject to review under ch. 120, F.S.

Section 15 – Tolling Periods, Exit Conferences, and Automatic Repayment of Overpayments

Present Situation: The Department is required to issue an assessment capable of becoming final 60 days prior to the end of the tolling of the audit period. The Department's rules provide taxpayers with a notice prior to the issuance of the Notice of Proposed Assessment and 30 days to request a conference with the auditor to resolve as many issues as possible before the taxpayer must take more formal actions to contest the assessment. Additional documentation is often provided during this period resulting in revisions to the liability. The statute does not require this pre-notice and does not allow for an extension of the tolling of the statute of limitations during this process.

[22] Section 213.21, F.S.

A District Court decision held that an assessment was untimely where the assessment was not issued 60 days prior to the expiration of an extended statute of limitations.[23] This decision is inconsistent with the operation of other statutes controlling application of the statute of limitations on the audit process and creates an inconsistency with assessments issued without an extension. The confusion makes it less likely for the Department to engage in extensions at the request of taxpayers and may result in less opportunity for taxpayers to resolve issues in the field.[24]

When a compliance audit results in an overpayment, credit, or refund, except for corporate income/franchise tax,[25] the taxpayer is required to complete an Application for Refund before the refund can be issued by the Department.[26]

Proposed Changes: Section 15 amends s. 213.34(2), F.S., to provide that during the course of an audit, but before the issuance of an assessment other than a jeopardy assessment, the Department shall issue to the taxpayer a notice explaining the audit findings. No later than 30 days after the issuance of the notice, the taxpayer may request in writing an exit conference at a mutually agreeable date and time with the Department's audit staff to discuss the audit findings. The exit conference must be conducted no later than 30 days after a request for the conference, unless the taxpayer and the Department enter into an agreement to extend the audit tolling period pursuant to s. 213.23, F.S. The taxpayer shall be given an opportunity at or before the exit conference to provide additional information and documents to the Department to rebut the audit findings. Upon the mutual written agreement between the Department and the taxpayer to extend the audit tolling period pursuant to s. 213.23, F.S., the exit conference may be continued to allow the taxpayer additional time to provide information and documents to the Department.
The Department shall review any information provided by the taxpayer and, if the Department revises the audit findings, a copy of the revised audit findings must be provided to the taxpayer. Such revision of the audit findings does not provide a right to any additional conference.

Section 15 also provides that if an exit conference is timely requested in writing, the limitations in s. 95.091(3), F.S., are tolled an additional 60 days. If the Department fails to offer a taxpayer the opportunity to hold an exit conference despite a timely written request, the limitations period in s. 95.091(3), F.S., may not be tolled for the additional 60 days. If the assessment is issued outside of the limitations period, the assessment must be reduced by the amount of those taxes, penalties, and interest for reporting periods outside of the limitations period, as modified by any other tolling or extension provisions.

If a request for an exit conference is not timely made, the right to a conference is waived.
A taxpayer may also affirmatively waive its right to an exit conference. Failure to hold an exit conference does not preclude the Department from issuing an assessment.

The Department may adopt rules to implement s. 213.34(2), F.S.

[23] *Verizon Business Purchasing, LLC, v. Dept. of Revenue*, 164 So.3d 806 (Fla. 1 DCA 2015).
[24] *Supra* Note 2.
[25] Chapter 220, F.S.
[26] Section 213.285(6), F.S.

Section 15 also creates s. 213.34(5), F.S., which provides that if, after offsetting the overpayment of any tax during an audit against a deficiency of any tax, penalty, or interest during the same audit period, the Department's audit finds that the tax paid is more than the correct amount, the Department must refund the overpayment that is within the applicable period provided by s. 215.26, F.S. Such action by the Department does not prevent a taxpayer from challenging the amount of the refund pursuant to chs. 72 and 120, F.S., or applying for a refund of additional tax within the applicable period. This provision will eliminate the requirement for a taxpayer to submit a refund application to obtain a refund discovered as the result of a compliance audit.

Section 17 – Garnishment

Present Situation: The Department has the authority to issue a levy upon credits, other personal property, or debts belonging to a delinquent taxpayer. The Department may levy for any taxes, penalties, and interest; however, the Department does not have the authority to levy for fees (e.g., administrative collection processing fee (ACP fee), warrant filing fees, or any other fee or cost that might be enacted into the Florida Statutes), additional daily accrued interest, or the authority to issue notices to levy (garnishments) by electronic means. [27] As a result, the Department typically continues with collection efforts for these additional fees after the initial levy is complete.

Proposed Changes: Section 17 amends s. 213.67, F.S., to authorize the Department to include all taxes, penalties, interest, costs, and fees authorized by law to be included in a garnishment or levy, which has the effect of avoiding multiple collection efforts for additional amounts. The bill allows the executive director of the Department, or his or her designee, to give notice of the amount of such delinquency by certified mail. The bill also allows the Department to deliver its notices of levy by certified mail, personal service, or electronic means, as requested by many financial institutions.

Section 18 – Methods of Accounting

Present Situation: A taxpayer may report any portion of its income for long-term contracts for Florida purposes on the percentage of completion method of accounting if the taxpayer reports any portion of its income for long-term contracts on the completed contract method of accounting for federal purposes.[28] The completed contract method of accounting is obsolete and has not been available since 1989. Florida law also references Treasury Regulation 1.451-3, which has been repurposed by the Internal Revenue Service.[29]

Proposed Changes: Section 18 repeals s. 220.42(3), F.S., and a reference to that subsection within s. 220.42(1), F.S.

Section 20 – Pandemic Benefit Charges Clarification

Present Situation: Employers file quarterly reports listing their employees and the wages paid to those employees. A tax rate is issued to each employer every year, and the tax due is determined

[27] Section 213.67, F.S.
[28] Section 220.42(3), F.S.
[29] *Id.*

by multiplying that tax rate by the amount of taxable wages reported by the employer. Reemployment tax is only imposed on the first $7,000 of wages.[30] A new employer is assigned a tax rate of 2.7 percent.[31] This tax rate is in effect for 8 chargeable quarters (approximately 2 ½ years), at which time the employer is eligible for an earned rate which can vary from the statutory minimum (0.1 percent) to the statutory maximum (5.4 percent) of taxable wages. One of the factors used in calculating the earned rate is the amount of reemployment assistance benefits paid to the employer's ex-employees.

In the 2021 Legislative Session, the rate calculation was amended to exclude benefit charges from the benefits paid during the period beginning April 1, 2020, and ending December 31, 2020, for rates effective through December 31, 2025.[32] The amendment also included a provision that repealed this exclusion if the balance of the Unemployment Trust Fund exceeds $4,071,519,600 on June 30 of any year, which could be interpreted to result in the inclusion of all benefit charges that were previously excluded, thereby substantially increasing tax rates.

Proposed Changes: Section 20 amends s. 443.131, F.S., to clarify that the rate calculation, in determining the contribution rate for rates effective January 1, 2021, through December 31, 2025, and regardless of whether certain provisions are repealed, shall exclude any benefit that is excluded by the multipliers under s. 443.131(b)1. and 2. and shall exclude benefits paid as a result of a governmental order related to COVID-19 to close or reduce capacity of a business before the date of the repeal. Therefore, for the calculation of rates through 2025, the Department will exclude benefit charges from the second through fourth quarters of 2020, even if the balance of the Unemployment Compensation Trust Fund exceeds $4,071,519,600.

Section 21 – Federally Required Offset Program

Present Situation: Federal law requires states to participate in the Treasury Offset Program (TOP) in order to receive grants for the administration of the reemployment assistance program. The TOP requires states to send a list of delinquent employers to Treasury, which intercepts any federal income tax refund and sends it to the states to offset the employers' reemployment tax debt.[33] Current state law does not specifically give the Department the authority to participate in the intercept program or provide the legal authority to adopt any needed rules regarding the intercept program.[34]

Proposed Changes: Section 21 requires the Department to comply with the requirements of the TOP as it pertains to the recovery of unemployment compensation debts as required by the United States Department of Labor pursuant to 26 U.S.C. s. 6402. The Department is also provided the authority to adopt rules to implement this provision.

Section 22 provides an effective date of July 1, 2022.

[30] Section 443.131(3)(e), F.S.
[31] Section 443.131(2)(a), F.S.
[32] Chapter 2021-2, L.O.F.
[33] 42 U.S.C. s. 503, which incorporates 26 U.S.C. s. 6402.
[34] Chapter 443, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution requires a two-thirds vote of the membership of each house of the Legislature to pass legislation requiring counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a state tax shared with them. The bill does not require counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a shared state tax. Therefore, the provisions of Article VII, section 18 of the Florida Constitution do not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Laws that create or raise state taxes or fees must be passed by two-thirds vote of the membership of each house of the Legislature in a separate bill that contains no other subject.[35] The bill does not increase any taxes or fees; therefore, the increased tax or fee requirements do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not determined the fiscal impact of the bill. Staff estimates that the bill will increase General Revenue Fund receipts by an indeterminate amount in Fiscal Years 2022-2023 through 2026-2027.[36]

B. Private Sector Impact:

None.

[35] *See* FLA. CONST., art. VII, s. 19.
[36] The Revenue Estimating Conference, 2022 Regular Session, *Impact Conference Results*, p. 213-215; 235-247 (Jan. 14, 2022), available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2022/_pdf/Impact0114.pdf (last accessed Feb. 4, 2022).

C. Government Sector Impact:

The Department of Revenue has analyzed the bill and expects implementation to cost less than $25,000.[37]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 72.011, 120.80, 202.34, 202.36, 206.14, 206.9931, 211.125, 212.05, 212.13, 212.14, 213.051, 213.053, 213.06, 213.21, 213.34, 213.345, 213.67, 220.42, 220.735, 443.131, and 443.171.

IX. Additional Information:

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

CS by Appropriations on February 28, 2022:
The committee substitute:

- Specifies the meaning of "good cause" in relation to when a taxpayer fails to provide records to the Department;
- Provides that the taxpayer has the burden of showing error in assessments made by the Department;
- Authorizes, rather than requires, the Department to issue a notice of intent to suspend a dealer's resale certificate if the dealer fails to produce records or shows reasonable cause for not producing records;
- Authorizes the Division to suspend a dealer's license and provides a procedure to lift such suspension;
- Authorizes the Division to revoke a dealer's license;
- Prohibits transferors from accepting orders from and delivering alcoholic beverages to a dealer more than 7 days after the Department publishes a list identifying that the dealer's resale certificate has been suspended;
- Specifies that service by the Department of a subpoena may be made upon proof of delivery by registered mail if a business' address is not in Florida;
- Requires, rather than authorizing, the Department to publish a list of dealers whose resale certificates have been suspended;

[37] Department of Revenue, *2022 Agency Legislative Bill Analysis, SB 1382*, available at http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=33394 (last accessed Feb. 4, 2022).

- Specifies that a qualified event is not limited to the list of events specified in statute relating to a taxpayer's challenge to an assessment or denial of a refund by the Department;
- Specifies that the executive director of the Department may give a notice of a delinquency and a notice of levy by certified mail;
- Revises the computation of contribution rates for rates effective January 1, 2021, through December 31, 2025, of employers for reemployment benefits; and
- Makes other technical and conforming changes.

CS by Finance and Tax on February 10, 2022:
The CS:
- Primarily conforms the bill to CS/HB 1041;
- Adds provisions to allow judges and presiding officers to determine good cause for a taxpayer's failure to provide records under certain circumstances;
- Removes the provision relating to emergency rulemaking powers of agencies headed by the Governor and the Cabinet;
- Removes the provision to clarify that the parties to any document evidencing the transfer of real property must establish the consideration before the transfer or the delivery of any document evidencing the transfer of the real property;
- Revises the process relating to when taxpayers object to audits;
- Revises the process relating to when taxpayers fail to provide documents requested by subpoena issued under specified sections of law;
- Deletes the repeal of a tax exemption for building materials used in the rehabilitation of real property located in an enterprise zone;
- Creates definitions relating to dealers licensed under ch. 561; adds language to clarify that the removal of resale certificates of dealers operates in the context of an audit when the taxpayer has refused to provide records after a formal demand; provides an opportunity for the taxpayer to challenge the action in the DOAH; provides a mechanism to inform wholesale distributors of the removal of the resale certificate; and authorizes the Department to implement rules;
- Authorizes the Department to share certain information relating to dealers and to adopt rules;
- Increases the timeframe in which a taxpayer may request conferences and the timeframe in which conferences must occur;
- Removes the section of the bill relating to the State Fire Marshal regulatory assessment and surcharge as well as the conforming sections;
- Revises the effective date to July 1, 2022; and
- Makes other conforming and technical changes.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2022	.	
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The Committee on Appropriations (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (c) is added to subsection (1) of section 72.011, Florida Statutes, to read:

72.011 Jurisdiction of circuit courts in specific tax matters; administrative hearings and appeals; time for commencing action; parties; deposits.—

(1)



(c) A taxpayer may not submit records pertaining to an assessment or refund claim as evidence in any proceeding under this section if those records were available to, or required to be kept by, the taxpayer and were not timely provided to the Department of Revenue after a written request for the records during the audit or protest period and before submission of a petition for hearing pursuant to chapter 120 or the filing of an action under paragraph (a), unless the taxpayer demonstrates to the court or presiding officer good cause for its failure to previously provide such records to the department. Good cause may include, but is not limited to, circumstances where a taxpayer was unable to originally provide records under extraordinary circumstances as defined in s. 213.21(10)(d)2.

Section 2. Paragraph (b) of subsection (14) of section 120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.—

(14) DEPARTMENT OF REVENUE.—

(b) *Taxpayer contest proceedings.*—

1. In any administrative proceeding brought pursuant to this chapter as authorized by s. 72.011(1), the taxpayer shall be designated the "petitioner" and the Department of Revenue shall be designated the "respondent," except that for actions contesting an assessment or denial of refund under chapter 207, the Department of Highway Safety and Motor Vehicles shall be designated the "respondent," and for actions contesting an assessment or denial of refund under chapters 210, 550, 561, 562, 563, 564, and 565, the Department of Business and Professional Regulation shall be designated the "respondent."

2. In any such administrative proceeding, the applicable



department’s burden of proof, except as otherwise specifically provided by general law, shall be limited to a showing that an assessment has been made against the taxpayer and the factual and legal grounds upon which the applicable department made the assessment.

3.a. Before ~~Prior to~~ filing a petition under this chapter, the taxpayer shall pay to the applicable department the amount of taxes, penalties, and accrued interest assessed by that department which are not being contested by the taxpayer. Failure to pay the uncontested amount shall result in the dismissal of the action and imposition of an additional penalty of 25 percent of the amount taxed.

b. The requirements of s. 72.011(2) and (3)(a) are jurisdictional for any action under this chapter to contest an assessment or denial of refund by the Department of Revenue, the Department of Highway Safety and Motor Vehicles, or the Department of Business and Professional Regulation.

4. Except as provided in s. 220.719, further collection and enforcement of the contested amount of an assessment for nonpayment or underpayment of any tax, interest, or penalty shall be stayed beginning on the date a petition is filed. Upon entry of a final order, an agency may resume collection and enforcement action.

5. The prevailing party, in a proceeding under ss. 120.569 and 120.57 authorized by s. 72.011(1), may recover all legal costs incurred in such proceeding, including reasonable attorney ~~attorney’s~~ fees, if the losing party fails to raise a justiciable issue of law or fact in its petition or response.

6. Upon review pursuant to s. 120.68 of final agency action



concerning an assessment of tax, penalty, or interest with respect to a tax imposed under chapter 212, or the denial of a refund of any tax imposed under chapter 212, if the court finds that the Department of Revenue improperly rejected or modified a conclusion of law, the court may award reasonable attorney ~~attorney's~~ fees and reasonable costs of the appeal to the prevailing appellant.

7. A taxpayer may not submit records pertaining to an assessment or refund claim as evidence in any proceeding brought pursuant to this chapter as authorized by s. 72.011(1) if those records were available to, or required to be kept by, the taxpayer and were not timely provided to the Department of Revenue after a written request for the records during the audit or protest period and before submission of a petition for hearing under this chapter, unless the taxpayer demonstrates good cause to the presiding officer for its failure to previously provide such records to the department. Good cause may include, but is not limited to, circumstances where a taxpayer was unable to originally provide records under extraordinary circumstances as defined in s. 213.21(10)(d)2.

Section 3. Paragraph (f) is added to subsection (4) of section 202.34, Florida Statutes, and subsection (6) is added to that section, to read:

202.34 Records required to be kept; power to inspect; audit procedure.—

(4)

(f) Once the notification required by paragraph (a) is issued, the department, at any time, may respond to contact initiated by a taxpayer to discuss the audit, and the taxpayer


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may provide records or other information, electronically or otherwise, to the department. The department may examine, at any time, documentation and other information voluntarily provided by the taxpayer, its representative, or other parties; information already in the department's possession; or publicly available information. The department's examination of such information does not mean an audit has commenced if the review takes place within 60 days after the notice of intent to conduct an audit. The requirement in paragraph (a) does not limit the department in making initial contact with the taxpayer to confirm receipt of the notification or to confirm the date that the audit will begin. If the taxpayer has not previously waived the 60-day notice period and believes the department commenced the audit prior to the 61st day, the taxpayer must object in writing to the department before the issuance of an assessment or the objection is waived. If the objection is not waived and it is determined that the audit was commenced before the 61st day after the issuance of the notice of intent to audit, the tolling period provided for in s. 213.345 is considered lifted for the number of days equal to the difference between the date the audit commenced and the 61st day after the date of the department's notice of intent to audit.

(6) The department may adopt rules to administer this section.

Section 4. Paragraph (a) of subsection (4) of section 202.36, Florida Statutes, is amended to read:

202.36 Departmental powers; hearings; distress warrants; bonds; subpoenas and subpoenas duces tecum.—

(4)(a) The department may issue subpoenas or subpoenas



duces tecum compelling the attendance and testimony of witnesses and the production of books, records, written materials, and electronically recorded information. Subpoenas must be issued with the written and signed approval of the executive director or his or her designee on a written and sworn application by any employee of the department. The application must set forth the reason for the application, the name of the person subpoenaed, the time and place of appearance of the witness, and a description of any books, records, or electronically recorded information to be produced, together with a statement by the applicant that the department has unsuccessfully attempted other reasonable means of securing information and that the testimony of the witness or the written or electronically recorded materials sought in the subpoena are necessary for the collection of taxes, penalty, or interest or the enforcement of the taxes levied or administered under this chapter. A subpoena shall be served in the manner provided by law and by the Florida Rules of Civil Procedure and shall be returnable only during regular business hours and at least 20 calendar days after the date of service of the subpoena. Any subpoena to which this subsection applies must identify the taxpayer to whom the subpoena relates and to whom the records pertain and must provide other information to enable the person subpoenaed to locate the records required under the subpoena. The department shall give notice to the taxpayer to whom the subpoena relates within 3 days after the day on which the service of the subpoena is made. Within 14 days after service of the subpoena, the person to whom the subpoena is directed may serve written objection to the inspection or copying of any of the designated


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materials. If objection is made, the department may not inspect or copy the materials, except pursuant to an order of the circuit court. If an objection is made, the department may petition any circuit court for an order to comply with the subpoena. The subpoena must contain a written notice of the right to object to the subpoena. Every subpoena served upon the witness or custodian of records must be accompanied by a copy of ~~the provisions of~~ this subsection. If a person refuses to obey a subpoena or subpoena duces tecum, the department may apply to any circuit court of this state to enforce compliance with the subpoena. Witnesses are entitled to be paid a mileage allowance and witness fees as authorized for witnesses in civil cases. The failure of a taxpayer to provide documents available to, or required to be kept by, the taxpayer and requested by a subpoena issued under this section creates a rebuttable presumption that the resulting proposed final agency action by the department, as to the requested documents, is correct and that the requested documents not produced by the taxpayer would be adverse to the taxpayer's position as to the proposed final agency action. If a taxpayer fails to provide documents requested by a subpoena issued under this section, the department may make an assessment from an estimate based upon the best information then available to it for the taxable period of retail sales of the taxpayer, together with any accrued interest and penalties. The department shall inform the taxpayer of the reason for the estimate and the information and methodology used to derive the estimate. The assessment shall be considered prima facie correct, and the taxpayer shall have the burden of showing any error in it. The presumption and authority to use estimates for the purpose of an



assessment under this paragraph do not apply solely because a taxpayer or its representative requests a conference to negotiate the production of a sample of records demanded by a subpoena.

Section 5. Subsection (4) of section 206.14, Florida Statutes, is amended to read:

206.14 Inspection of records; audits; hearings; forms; rules and regulations.—

(4) If any person unreasonably refuses access to such records, books, papers or other documents, or equipment, or if any person fails or refuses to obey such subpoenas duces tecum or to testify, except for lawful reasons, before the department or any of its authorized agents, the department shall certify the names and facts to the clerk of the circuit court of any county; and the circuit court shall enter such order against such person in the premises as the enforcement of this law and justice requires. The failure of a taxpayer to provide documents available to, or required to be kept by, the taxpayer and requested by a subpoena issued under this section creates a rebuttable presumption that the resulting proposed final agency action by the department, as to the requested documents, is correct and that the requested documents not produced by the taxpayer would be adverse to the taxpayer’s position as to the proposed final agency action. If a taxpayer fails to provide documents requested by a subpoena issued under this section, the department may make an assessment from an estimate of the taxpayer’s liability based upon the best information then available to it. The department shall inform the taxpayer of the reason for the estimate and the information and methodology used


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to derive the estimate. The assessment shall be considered prima facie correct, and the taxpayer shall have the burden of showing any error in it. The presumption and authority to use estimates for the purpose of an assessment under this paragraph do not apply solely because a taxpayer or its representative requests a conference to negotiate the production of a sample of records demanded by a subpoena.

Section 6. Subsection (1) of section 206.9931, Florida Statutes, is amended to read:

206.9931 Administrative provisions.—

(1) Any person producing in, importing into, or causing to be imported into this state taxable pollutants for sale, use, or otherwise and who is not registered or licensed pursuant to other parts of this chapter is hereby required to register and become licensed for the purposes of this part. Such person shall register as either a producer or importer of pollutants and shall be subject to all applicable registration and licensing provisions of this chapter, as if fully set out in this part and made expressly applicable to the taxes imposed herein, including, but not limited to, ss. 206.02, 206.021, 206.022, 206.025, 206.03, 206.04, and 206.05. For the purposes of this section, registrations required exclusively for this part shall be made within 90 days of July 1, 1986, for existing businesses, or before ~~prior to~~ the first production or importation of pollutants for businesses created after July 1, 1986. ~~The fee for registration shall be $30.~~ Failure to timely register is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 7. Paragraph (b) of subsection (3) of section



211.125, Florida Statutes, is amended to read:

211.125 Administration of law; books and records; powers of the department; refunds; enforcement provisions; confidentiality.—

(3)

(b) The department may ~~shall have the power to~~ inspect or examine the books, records, or papers of any operator, producer, purchaser, royalty interest owner, taxpayer, or transporter of taxable products which are reasonably required for the purposes of this part and may require such person to testify under oath or affirmation or to answer competent questions touching upon such person's business or production of taxable products in this ~~the~~ state.

1. The department may issue subpoenas to compel third parties to testify or to produce records or other evidence held by them.

2. Any duly authorized representative of the department may administer an oath or affirmation.

3. If any person fails to comply with a request of the department for the inspection of records, fails to give testimony or respond to competent questions, or fails to comply with a subpoena, a circuit court having jurisdiction over such person may, upon application by the department, issue orders necessary to secure compliance. The failure of a taxpayer to provide documents available to, or required to be kept by, the taxpayer and requested by a subpoena issued under this section creates a rebuttable presumption that the resulting proposed final agency action by the department, as to the requested documents, is correct and that the requested documents not


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produced by the taxpayer would be adverse to the taxpayer's position as to the proposed final agency action. If a taxpayer fails to provide documents requested by a subpoena issued under this section, the department may make an assessment from an estimate based upon the best information then available to it. The department shall inform the taxpayer of the reason for the estimate and the information and methodology used to derive the estimate. The assessment shall be considered prima facie correct, and the taxpayer shall have the burden of showing any error in it.

Section 8. Paragraph (a) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making or facilitating remote sales; who rents or furnishes any of the things or services taxable under this chapter; or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(a)1.a. At the rate of 6 percent of the sales price of each item or article of tangible personal property when sold at retail in this state, computed on each taxable sale for the purpose of remitting the amount of tax due the state, and including each and every retail sale.



b. Each occasional or isolated sale of an aircraft, boat, mobile home, or motor vehicle of a class or type which is required to be registered, licensed, titled, or documented in this state or by the United States Government is ~~shall be~~ subject to tax at the rate provided in this paragraph. The department shall by rule adopt any nationally recognized publication for valuation of used motor vehicles as the reference price list for any used motor vehicle which is required to be licensed pursuant to s. 320.08(1), (2), (3)(a), (b), (c), or (e), or (9). If any party to an occasional or isolated sale of such a vehicle reports to the tax collector a sales price which is less than 80 percent of the average loan price for the specified model and year of such vehicle as listed in the most recent reference price list, the tax levied under this paragraph shall be computed by the department on such average loan price unless the parties to the sale have provided to the tax collector an affidavit signed by each party, or other substantial proof, stating the actual sales price. Any party to such sale who reports a sales price less than the actual sales price is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. The department shall collect or attempt to collect from such party any delinquent sales taxes. In addition, such party shall pay any tax due and any penalty and interest assessed plus a penalty equal to twice the amount of the additional tax owed. Notwithstanding any other provision of law, the Department of Revenue may waive or compromise any penalty imposed pursuant to this subparagraph.

2. This paragraph does not apply to the sale of a boat or aircraft by or through a registered dealer under this chapter to


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a purchaser who, at the time of taking delivery, is a nonresident of this state, does not make his or her permanent place of abode in this state, and is not engaged in carrying on in this state any employment, trade, business, or profession in which the boat or aircraft will be used in this state, or is a corporation none of the officers or directors of which is a resident of, or makes his or her permanent place of abode in, this state, or is a noncorporate entity that has no individual vested with authority to participate in the management, direction, or control of the entity's affairs who is a resident of, or makes his or her permanent abode in, this state. For purposes of this exemption, either a registered dealer acting on his or her own behalf as seller, a registered dealer acting as broker on behalf of a seller, or a registered dealer acting as broker on behalf of the nonresident purchaser may be deemed to be the selling dealer. This exemption is ~~shall~~ not ~~be~~ allowed unless:

a. The nonresident purchaser removes a qualifying boat, as described in sub-subparagraph f., from this ~~the~~ state within 90 days after the date of purchase or extension, or the nonresident purchaser removes a nonqualifying boat or an aircraft from this state within 10 days after the date of purchase or, when the boat or aircraft is repaired or altered, within 20 days after completion of the repairs or alterations; or if the aircraft will be registered in a foreign jurisdiction and:

(I) Application for the aircraft's registration is properly filed with a civil airworthiness authority of a foreign jurisdiction within 10 days after the date of purchase;

(II) The nonresident purchaser removes the aircraft from

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this ~~the~~ state to a foreign jurisdiction within 10 days after the date the aircraft is registered by the applicable foreign airworthiness authority; and

(III) The aircraft is operated in this ~~the~~ state solely to remove it from this ~~the~~ state to a foreign jurisdiction.

For purposes of this sub-subparagraph, the term "foreign jurisdiction" means any jurisdiction outside of the United States or any of its territories;

b. The nonresident purchaser, within 90 days after ~~from~~ the date of departure, provides the department with written proof that the nonresident purchaser licensed, registered, titled, or documented the boat or aircraft outside this ~~the~~ state. If such written proof is unavailable, within 90 days the nonresident purchaser must ~~shall~~ provide proof that the nonresident purchaser applied for such license, title, registration, or documentation. The nonresident purchaser shall forward to the department proof of title, license, registration, or documentation upon receipt;

c. The nonresident purchaser, within 30 days after removing the boat or aircraft from this state ~~Florida~~, furnishes the department with proof of removal in the form of receipts for fuel, dockage, slippage, tie-down, or hangaring from outside of this state ~~Florida~~. The information so provided must clearly and specifically identify the boat or aircraft;

d. The selling dealer, within 30 days after the date of sale, provides to the department a copy of the sales invoice, closing statement, bills of sale, and the original affidavit signed by the nonresident purchaser affirming that the


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nonresident purchaser qualifies for exemption from sales tax pursuant to this subparagraph and attesting that the nonresident purchaser will provide the documentation required to substantiate the exemption claimed under this subparagraph ~~attesting that he or she has read the provisions of this section~~;

e. The seller makes a copy of the affidavit a part of his or her record for as long as required by s. 213.35; and

f. Unless the nonresident purchaser of a boat of 5 net tons of admeasurement or larger intends to remove the boat from this state within 10 days after the date of purchase or when the boat is repaired or altered, within 20 days after completion of the repairs or alterations, the nonresident purchaser applies to the selling dealer for a decal which authorizes 90 days after the date of purchase for removal of the boat. The nonresident purchaser of a qualifying boat may apply to the selling dealer within 60 days after the date of purchase for an extension decal that authorizes the boat to remain in this state for an additional 90 days, but not more than a total of 180 days, before the nonresident purchaser is required to pay the tax imposed by this chapter. The department is authorized to issue decals in advance to dealers. The number of decals issued in advance to a dealer shall be consistent with the volume of the dealer’s past sales of boats which qualify under this sub-subparagraph. The selling dealer or his or her agent shall mark and affix the decals to qualifying boats in the manner prescribed by the department, before delivery of the boat.

(I) The department is hereby authorized to charge dealers a fee sufficient to recover the costs of decals issued, except the


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extension decal shall cost $425.

(II) The proceeds from the sale of decals will be deposited into the administrative trust fund.

(III) Decals shall display information to identify the boat as a qualifying boat under this sub-subparagraph, including, but not limited to, the decal’s date of expiration.

(IV) The department is authorized to require dealers who purchase decals to file reports with the department and may prescribe all necessary records by rule. All such records are subject to inspection by the department.

(V) Any dealer or his or her agent who issues a decal falsely, fails to affix a decal, mismarks the expiration date of a decal, or fails to properly account for decals will be considered prima facie to have committed a fraudulent act to evade the tax and will be liable for payment of the tax plus a mandatory penalty of 200 percent of the tax, and shall be liable for fine and punishment as provided by law for a conviction of a misdemeanor of the first degree, as provided in s. 775.082 or s. 775.083.

(VI) Any nonresident purchaser of a boat who removes a decal before permanently removing the boat from this ~~the~~ state, or defaces, changes, modifies, or alters a decal in a manner affecting its expiration date before its expiration, or who causes or allows the same to be done by another, will be considered prima facie to have committed a fraudulent act to evade the tax and will be liable for payment of the tax plus a mandatory penalty of 200 percent of the tax, and shall be liable for fine and punishment as provided by law for a conviction of a misdemeanor of the first degree, as provided in s. 775.082 or s.



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775.083.

(VII) The department is authorized to adopt rules necessary to administer and enforce this subparagraph and to publish the necessary forms and instructions.

(VIII) The department is hereby authorized to adopt emergency rules pursuant to s. 120.54(4) to administer and enforce ~~the provisions of~~ this subparagraph.

If the nonresident purchaser fails to remove the qualifying boat from this state within the maximum 180 days after purchase or a nonqualifying boat or an aircraft from this state within 10 days after purchase or, when the boat or aircraft is repaired or altered, within 20 days after completion of such repairs or alterations, or permits the boat or aircraft to return to this state within 6 months after ~~from~~ the date of departure, except as provided in s. 212.08(7)(fff), or if the nonresident purchaser fails to furnish the department with any of the documentation required by this subparagraph within the prescribed time period, the nonresident purchaser is ~~shall be~~ liable for use tax on the cost price of the boat or aircraft and, in addition thereto, payment of a penalty to the Department of Revenue equal to the tax payable. This penalty shall be in lieu of the penalty imposed by s. 212.12(2). The maximum 180-day period following the sale of a qualifying boat tax-exempt to a nonresident may not be tolled for any reason.

Section 9. Subsections (2) and (5) of section 212.13, Florida Statutes, are amended, and subsection (7) is added to that section, to read:

212.13 Records required to be kept; power to inspect; audit


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procedure.—

(2)(a) Each dealer, as defined in this chapter, shall secure, maintain, and keep as long as required by s. 213.35 a complete record of tangible personal property or services received, used, sold at retail, distributed or stored, leased or rented by said dealer, together with invoices, bills of lading, gross receipts from such sales, and other pertinent records and papers as may be required by the department for the reasonable administration of this chapter. All such records must be made available to the department at reasonable times and places and by reasonable means, including in an electronic format when so kept by the dealer. Any dealer subject to this chapter who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. If, however, any subsequent offense involves intentional destruction of such records with an intent to evade payment of or deprive the state of any tax revenues, such subsequent offense is a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(b)1. As used in this paragraph, the term:

a. "Dealer" means a dealer, as defined in s. 212.06(2), which is licensed under chapter 561.

b. "Division" means the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

c. "Transferor" means an entity or person, licensed under chapter 561, who sells and delivers alcoholic beverages to a dealer for purposes of resale.

2. Dealers shall maintain records of all monthly sales and


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all monthly purchases of alcoholic beverages and produce such records for inspection by the department. During the course of an audit, if the department has made a formal demand for such records and a dealer has failed to comply with such a demand, the department may issue a written request for such records to the dealer, allowing the dealer an additional 20 days to provide the requested records or show reasonable cause why the records cannot be produced. If the dealer fails to produce the requested records or show reasonable cause why the records cannot be produced, the department may issue a notice of intent to suspend the dealer's resale certificate. The dealer shall then have 20 days to file a petition with the department challenging the proposed action pursuant to s. 120.569. If the dealer fails to timely file a petition or the department prevails in a proceeding challenging the notice, the department shall suspend the resale certificate.

3. If a dealer's resale certificate is suspended under this subsection in the course of the dealer's first audit before the department for sales and use tax, the failure of a dealer to comply is deemed sufficient cause under s. 561.29(1)(a) for the division to suspend the dealer's license and the department shall promptly notify the division and the dealer of such failure for further appropriate action by the division. The division shall lift the suspension of the license and the department shall lift the suspension of the resale certificate if the dealer provides the necessary records to conduct the audit prior to issuance of an estimated assessment, posts a bond with the department in the amount of an estimated assessment to ensure payment of the assessment, or fully pays any tax,


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penalties, and interest owed.

4. If a dealer's resale certificate is suspended under this subsection and the audit is not the dealer's first audit before the department for sales and use tax, such failure is sufficient cause under s. 561.29(1)(a) for the division to revoke the dealer's license and the department shall promptly notify the division and the dealer of such failure for further appropriate action by the division.

5. The department shall notify the division when a dealer's resale certificate is suspended and shall publish a list of dealers whose resale certificates have been suspended as authorized by s. 213.053(21). The division shall include notice of such suspension in its license verification database or provide a link to the department's published list from the division's license verification page.

6. A transferor may not accept orders from or deliver alcoholic beverages to a dealer more than 7 days, inclusive of any Saturday, Sunday, or legal holiday, after the date the department publishes the list under subparagraph 5. identifying that the dealer's resale certificate has been suspended.

7. A transferor who sells alcoholic beverages to a dealer whose resale certificate has been suspended is not responsible for any tax, penalty, or interest due if the alcoholic beverages are delivered no more than 7 days, inclusive of any Saturday, Sunday, or legal holiday, after the date of publication of the suspension.

8. The department may adopt rules to implement this paragraph.

(5)(a) The department shall send written notification at


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least 60 days before ~~prior to~~ the date an auditor is scheduled to begin an audit, informing the taxpayer of the audit. The department is not required to give 60 days' prior notification of a forthcoming audit in any instance in which the taxpayer requests an emergency audit.

(b) Such written notification must ~~shall~~ contain:

1. The approximate date on which the auditor is scheduled to begin the audit.

2. A reminder that all of the records, receipts, invoices, resale certificates, and related documentation of the taxpayer must be made available to the auditor.

3. Any other requests or suggestions the department may deem necessary.

(c) Only records, receipts, invoices, resale certificates, and related documentation that ~~which~~ are available to the auditor when such audit begins are ~~shall be~~ deemed acceptable for the purposes of conducting such audit. A resale certificate containing a date before ~~prior to~~ the date the audit commences is ~~shall be~~ deemed acceptable documentation of the specific transaction or transactions which occurred in the past, for the purpose of conducting an audit.

(d) The provisions of this chapter concerning fraudulent or improper records, receipts, invoices, resale certificates, and related documentation ~~shall~~ apply when conducting any audit.

(e) The requirement in paragraph (a) of 60 days' written notification does not apply to the distress or jeopardy situations referred to in s. 212.14 or s. 212.15.

(f) Once the notification required by paragraph (a) is issued, the department, at any time, may respond to contact

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initiated by a taxpayer to discuss the audit, and the taxpayer may provide documentation or other information, electronically or otherwise, to the department. The department may examine, at any time, documentation and other information voluntarily provided by the taxpayer, its representative, or other parties; information already in the department's possession; or publicly available information. The department's examination of such information does not mean an audit has commenced if the review takes place within 60 days after the notice of intent to conduct an audit. The requirement in paragraph (a) does not limit the department in making initial contact with the taxpayer to confirm receipt of the notification or to confirm the date that the audit will begin. If the taxpayer has not previously waived the 60-day notice period and believes the department commenced the audit prior to the 61st day, the taxpayer must object in writing to the department before the issuance of an assessment or else the objection is waived. If the objection is not waived and it is determined that the audit was commenced before the 61st day after the issuance of the notice of intent to audit, the tolling period provided for in s. 213.345 is considered lifted for the number of days equal to the difference between the date the audit commenced and the 61st day after the date of the department's notice of intent to audit.

(7) The department may adopt rules to administer this section.

Section 10. Paragraph (a) of subsection (7) of section 212.14, Florida Statutes, is amended to read:

212.14 Departmental powers; hearings; distress warrants; bonds; subpoenas and subpoenas duces tecum.—



(7)(a) For purposes of collection and enforcement of taxes, penalties, and interest levied under this chapter, the department may issue subpoenas or subpoenas duces tecum compelling the attendance and testimony of witnesses and the production of books, records, written materials, and electronically recorded information. Subpoenas shall be issued with the written and signed approval of the executive director or his or her designee on written and sworn application by any employee of the department. The application must set forth the reason for the application, the name of the person subpoenaed, the time and place of appearance of the witness, and a description of any books, records, or electronically recorded information to be produced, together with a statement by the applicant that the department has unsuccessfully attempted other reasonable means of securing information and that the testimony of the witness or the written or electronically recorded materials sought in the subpoena are necessary for the collection of taxes, penalty, or interest or the enforcement of the taxes levied under this chapter. A subpoena must ~~shall~~ be served in the manner provided by law and by the Florida Rules of Civil Procedure and is ~~shall be~~ returnable only during regular business hours and at least 20 calendar days after the date of service of the subpoena. Any subpoena to which this subsection applies must ~~shall~~ identify the taxpayer to whom the subpoena relates and to whom the records pertain and must ~~shall~~ provide other information to enable the person subpoenaed to locate the records required under the subpoena. The department shall give notice to the taxpayer to whom the subpoena relates within 3 days after ~~of~~ the day on which the service of the subpoena is


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made. Within 14 days after service of the subpoena, the person to whom the subpoena is directed may serve written objection to inspection or copying of any of the designated materials. If objection is made, the department is ~~shall~~ not ~~be~~ entitled to inspect and copy the materials, except pursuant to an order of the circuit court. If an objection is made, the department may petition any circuit court for an order to comply with the subpoena. The subpoena must ~~shall~~ contain a written notice of the right to object to the subpoena. Every subpoena served upon the witness or records custodian must be accompanied by a copy of ~~the provisions of~~ this subsection. If a person refuses to obey a subpoena or subpoena duces tecum, the department may apply to any circuit court of this state to enforce compliance with the subpoena. Witnesses must ~~shall~~ be paid mileage and witness fees as authorized for witnesses in civil cases. The failure of a taxpayer to provide documents available to, or required to be kept by, the taxpayer and requested by a subpoena issued under this section creates a rebuttable presumption that the resulting proposed final agency action by the department, as to the requested documents, is correct and that the requested documents not produced by the taxpayer would be adverse to the taxpayer's position as to the proposed final agency action. If a taxpayer fails to provide documents requested by a subpoena issued under this section, the department may make an assessment from an estimate based upon the best information then available to it for the taxable period of retail sales of the taxpayer, together with any accrued interest and penalties. The department shall inform the taxpayer of the reason for the estimate and the information and methodology used to derive the estimate. The


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assessment shall be considered prima facie correct, and the taxpayer shall have the burden of showing any error in it. The presumption and authority to use estimates for the purpose of an assessment under this paragraph do not apply solely because a taxpayer or its representative requests a conference to negotiate the production of a sample of records demanded by a subpoena.

Section 11. Section 213.051, Florida Statutes, is amended to read:

213.051 Service of subpoenas.—

(1) For the purpose of administering and enforcing ~~the provisions of~~ the revenue laws of this state, the executive director of the Department of Revenue, or any of his or her assistants designated in writing by the executive director, may ~~shall be authorized to~~ serve subpoenas and subpoenas duces tecum issued by the state attorney relating to investigations concerning the taxes enumerated in s. 213.05.

(2) In addition to the procedures for service prescribed by chapter 48, the department may serve subpoenas it issues pursuant to ss. 202.36, 206.14, 211.125, 212.14, and 220.735 upon any business registered with the department at the address on file with the department if it received correspondence from the business from that address within 30 days after issuance of the subpoena or if the address is listed with the Department of State Division of Corporations as a principal or business address. If a business' address is not in this state, service is made upon proof of delivery by certified or registered mail or under the notice provisions of s. 213.0537.

Section 12. Present subsections (21) and (22) of section



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213.053, Florida Statutes, are redesignated as subsections (22) and (23), respectively, and a new subsection (21) is added to that section, to read:

213.053 Confidentiality and information sharing.—

(21)(a) The department shall publish a list of dealers whose resale certificates have been suspended pursuant to s. 212.13(2)(b). The list may contain the name of the dealer, including the name under which the dealer does business; the address of the dealer; the dealer's employer identification number or other taxpayer identification number; and the date on which the dealer was added to the list.

(b) The department shall update the list daily as needed to reflect additions to and deletions from the list.

(c) The department may adopt rules to administer this subsection.

Section 13. Section 213.06, Florida Statutes, is amended to read:

213.06 Rules of department; circumstances requiring emergency rules.—

(1) The Department of Revenue may ~~has the authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of the revenue laws.

(2) The executive director of the department may adopt emergency rules pursuant to s. 120.54 on behalf of the department when the effective date of a legislative change occurs sooner than 120 ~~60~~ days after the close of a legislative session in which enacted or after the Governor approves or fails to veto the legislative change, whichever is later, and the change affects a tax rate or a collection or reporting procedure



which affects a substantial number of dealers or persons subject to the tax change or procedure. The Legislature finds that such circumstances qualify as an exception to the prerequisite of a finding of immediate danger to the public health, safety, or welfare as set forth in s. 120.54(4)(a) and qualify as circumstances requiring an emergency rule. Emergency rules adopted under this subsection are exempt from s. 120.54(4)(c), remain in effect for 6 months or until replaced by rules adopted under the nonemergency rulemaking procedures of the Administrative Procedure Act, and may be renewed for no more than 3 additional 6-month periods during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(3) The grants of rulemaking authority in subsections (1) and (2) are sufficient to allow the department to adopt rules implementing all revenue laws administered by the department. Each revenue law administered by the department is an enabling statute authorizing the department to implement it, regardless of whether the enabling statute contains its own grant of rulemaking authority.

Section 14. Paragraph (b) of subsection (1) and paragraph (a) of subsection (3) of section 213.21, Florida Statutes, are amended, and subsections (11) and (12) are added to that section, to read:

213.21 Informal conferences; compromises.—

(1)

(b) The statute of limitations upon the issuance of ~~final~~ assessments and the period for filing a claim for refund as required by s. 215.26(2) for any transactions occurring during



the audit period shall be tolled during the period in which the taxpayer is engaged in a procedure under this section.

(3)(a) A taxpayer's liability for any tax or interest specified in s. 72.011(1) may be compromised by the department upon the grounds of doubt as to liability for or collectibility of such tax or interest. A taxpayer's liability for interest under any of the chapters specified in s. 72.011(1) shall be settled or compromised in whole or in part whenever or to the extent that the department determines that the delay in the determination of the amount due is attributable to the action or inaction of the department. A taxpayer's liability for penalties under any of the chapters specified in s. 72.011(1) greater than 25 percent of the tax must ~~may~~ be settled or compromised if ~~it is determined by~~ the department determines that the noncompliance is not due to ~~reasonable cause and not to~~ willful negligence, willful neglect, or fraud. In addition, a taxpayer's liability for penalties under any of the chapters specified in s. 72.011(1) up to and including 25 percent of the tax may be settled or compromised if the department determines that reasonable cause exists and the penalties greater than 25 percent of the tax were compromised because the noncompliance is not due to willful negligence, willful neglect, or fraud. There is a rebuttable presumption that a taxpayer's noncompliance is due to willful negligence, willful neglect, or fraud when adequate records as requested by the department are not provided to the department before the issuance of an assessment. The presumption may be rebutted by a showing of reasonable cause why adequate records as requested were not provided or were unavailable to the taxpayer. The facts and circumstances are


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subject to de novo review ~~to determine the existence of reasonable cause~~ in any administrative proceeding or judicial action challenging an assessment of penalty under any of the chapters specified in s. 72.011(1). A taxpayer who establishes reasonable reliance on the written advice issued by the department to the taxpayer is ~~will be~~ deemed to have shown reasonable cause for the noncompliance. ~~In addition, a taxpayer's liability for penalties under any of the chapters specified in s. 72.011(1) in excess of 25 percent of the tax shall be settled or compromised if the department determines that the noncompliance is due to reasonable cause and not to willful negligence, willful neglect, or fraud.~~ The department shall maintain records of all compromises, and the records shall state the basis for the compromise. The records of compromise under this paragraph are ~~shall~~ not ~~be~~ subject to disclosure pursuant to s. 119.07(1) and are ~~shall be~~ considered confidential information governed by ~~the provisions of~~ s. 213.053.

(11) Following the expiration of time for a taxpayer to challenge an assessment or a denial of a refund as provided in s. 72.011, the department may consider a request to settle or compromise any tax, interest, penalty, or other liability under this section if the taxpayer demonstrates that the failure to initiate a timely challenge was due to a qualified event that directly impacted compliance with that section. For purposes of this subsection, a qualified event is limited to the occurrence of events during an audit or the expired protest period which were beyond the control of the taxpayer, including, but not limited to, the death or life-threatening injury or illness of


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the taxpayer or an immediate family member of the taxpayer; the death or life-threatening injury or illness of the responsible party that controlled, managed, or directed the affected business entity; acts of war or terrorism; natural disasters; fire; or other catastrophic loss. The department may not consider a request received more than 180 days after the expiration of time allowed under s. 72.011.

(12) Any decision by the department regarding a taxpayer's request to compromise or settle a liability under this section is not a final order subject to review under chapter 120.

Section 15. Section 213.34, Florida Statutes, is amended to read:

213.34 Authority to audit.—

(1) The Department of Revenue may ~~shall have the authority to~~ audit and examine the accounts, books, or records of all persons ~~who are~~ subject to a revenue law made applicable to this chapter, or otherwise placed under the control and administration of the department, for the purpose of ascertaining the correctness of any return which has been filed or payment which has been made, or for the purpose of making a return where none has been made.

(2) The department, or its duly authorized agents, may inspect such books and records necessary to ascertain a taxpayer's compliance with the revenue laws of this state, provided that the department's power to make an assessment or grant a refund has not terminated under s. 95.091(3).

(a) During the course of an audit, but before the issuance of an assessment other than a jeopardy assessment, the department shall issue to the taxpayer a notice explaining the



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audit findings. No later than 30 days after the issuance of the notice, the taxpayer may request in writing an exit conference at a mutually agreeable date and time with the department's audit staff to discuss the audit findings. The exit conference must be conducted no later than 30 days after a request for the conference, unless the taxpayer and the department enter into an agreement to extend the audit tolling period pursuant to s. 213.23. The taxpayer shall be given an opportunity at or before the exit conference to provide additional information and documents to the department to rebut the audit findings. Upon the mutual written agreement between the department and the taxpayer to extend the audit tolling period pursuant to s. 213.23, the exit conference may be continued to allow the taxpayer additional time to provide information and documents to the department. The department shall review any information provided by the taxpayer and, if the department revises the audit findings, a copy of the revised audit findings must be provided to the taxpayer. Such revision of the audit findings does not provide a right to any additional conference.

(b) If an exit conference is timely requested in writing, the limitations in s. 95.091(3) are tolled an additional 60 days. If the department fails to offer a taxpayer the opportunity to hold an exit conference despite a timely written request, the limitations period in s. 95.091(3) may not be tolled for the additional 60 days. If the assessment is issued outside of the limitations period, the assessment must be reduced by the amount of those taxes, penalties, and interest for reporting periods outside of the limitations period, as modified by any other tolling or extension provisions.



(c) If a request for an exit conference is not timely made, the right to a conference is waived. A taxpayer may also affirmatively waive its right to an exit conference. Failure to hold an exit conference does not preclude the department from issuing an assessment.

(d) The department may adopt rules to implement this subsection.

(3) The department may correct by credit or refund any overpayment of tax, penalty, or interest revealed by an audit and shall make assessment of any deficiency in tax, penalty, or interest determined to be due.

(4) Notwithstanding ~~the provisions of~~ s. 215.26, the department shall offset the overpayment of any tax during an audit period against a deficiency of any tax, penalty, or interest determined to be due during the same audit period.

(5) After the application of subsection (4), if the department's audit finds that the tax paid is more than the correct amount, the department must refund the overpayment that is within the applicable period provided by s. 215.26. Such action by the department does not prevent a taxpayer from challenging the amount of the refund pursuant to chapters 72 and 120 or applying for a refund of additional tax within the applicable period.

Section 16. Section 213.345, Florida Statutes, is amended to read:

213.345 Tolling of periods during an audit.—The limitations in s. 95.091(3) and the period for filing a claim for refund as required by s. 215.26(2) are ~~shall be~~ tolled for a period of 1 year if the Department of Revenue has, on or after July 1, 1999,


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issued a notice of intent to conduct an audit or investigation of the taxpayer's account within the applicable period of time. The 1-year period is tolled upon receipt of written objections to the subpoena and for the entire pendency of any action that seeks an order to enforce compliance with or to challenge any subpoena issued by the department compelling the attendance and testimony of witnesses and the production of books, records, written materials, and electronically recorded information. The department must commence an audit within 120 days after it issues a notice of intent to conduct an audit, unless the taxpayer requests a delay. If the taxpayer does not request a delay and the department does not begin the audit within 120 days after issuing the notice, the tolling period terminates ~~shall terminate~~ unless the taxpayer and the department enter into an agreement to extend the period pursuant to s. 213.23. If the department issues a notice explaining its audit findings under s. 213.34(2)(a) based on an estimate because the taxpayer has failed or refuses to provide records, the audit will be deemed to have commenced for purposes of this section. In the event the department issues an assessment beyond the tolling period, the assessment will be considered late and the assessment shall be reduced by the amount of those taxes, penalties, and interest for reporting periods outside of the limitations period, as modified by any other tolling or extension provisions.

Section 17. Subsections (1), (3), and (6) of section 213.67, Florida Statutes, are amended to read:

213.67 Garnishment.—

(1) If a person is delinquent in the payment of any taxes,



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939 penalties, ~~and~~ interest, additional daily accrued interest,
940 costs, and fees owed to the department, the executive director
941 or his or her designee may give notice of the amount of such
942 delinquency by certified or registered mail, by personal
943 service, or by electronic means, including, but not limited to,
944 facsimile transmissions, electronic data interchange, or use of
945 the Internet, to all persons having in their possession or under
946 their control any credits or personal property, exclusive of
947 wages, belonging to the delinquent taxpayer, or owing any debts
948 to such delinquent taxpayer at the time of receipt by them of
949 such notice. Thereafter, any person ~~who has been~~ notified may
950 not transfer or make any other disposition of such credits,
951 other personal property, or debts until the executive director
952 or his or her designee consents to a transfer or disposition or
953 until 60 days after the receipt of such notice. However, the
954 credits, other personal property, or debts that exceed the
955 delinquent amount stipulated in the notice are not subject to
956 this section, wherever held, if the taxpayer does not have a
957 prior history of tax delinquencies. If during the effective
958 period of the notice to withhold, any person so notified makes
959 any transfer or disposition of the property or debts required to
960 be withheld under this section, he or she is liable to the state
961 for any indebtedness owed to the department by the person with
962 respect to whose obligation the notice was given to the extent
963 of the value of the property or the amount of the debts thus
964 transferred or paid if, solely by reason of such transfer or
965 disposition, the state is unable to recover the indebtedness of
966 the person with respect to whose obligation the notice was
967 given. If the delinquent taxpayer contests the intended levy in


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circuit court or under chapter 120, the notice under this section remains effective until that final resolution of the contest. Any financial institution receiving such notice maintains ~~will maintain~~ a right of setoff for any transaction involving a debit card occurring on or before the date of receipt of such notice.

(3) During the last 30 days of the 60-day period set forth in subsection (1), the executive director or his or her designee may levy upon such credits, other personal property, or debts. The levy must be accomplished by delivery of a notice of levy by certified or registered mail, by personal service, or by electronic means, including, but not limited to, facsimile transmission or electronic data exchange. Upon receipt of the notice of levy, ~~which~~ the person possessing the credits, other personal property, or debts shall transfer them to the department or pay to the department the amount owed to the delinquent taxpayer.

(6)(a) Levy may be made under subsection (3) upon credits, other personal property, or debt of any person with respect to any unpaid tax, penalties, ~~and~~ interest, additional daily accrued interest, costs, and fees only after the executive director or his or her designee has notified such person in writing of the intention to make such levy.

(b) No less than 30 days before the day of the levy, the notice of intent to levy required under paragraph (a) must ~~shall~~ be given in person or sent by certified or registered mail to the person’s last known address.

(c) The notice required in paragraph (a) must include a brief statement that sets forth in simple and nontechnical


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terms:

1. The provisions of this section relating to levy and sale of property;

2. The procedures applicable to the levy under this section;

3. The administrative and judicial appeals available to the taxpayer with respect to such levy and sale, and the procedures relating to such appeals; and

4. Any ~~The~~ alternatives~~, if any,~~ available to taxpayers which could prevent levy on the property.

Section 18. Section 220.42, Florida Statutes, is amended to read:

220.42 Methods of accounting.—

(1) For purposes of this code, a taxpayer's method of accounting must ~~shall~~ be the same as such taxpayer's method of accounting for federal income tax purposes~~, except as provided in subsection (3)~~. If no method of accounting has been regularly used by a taxpayer, net income for purposes of this code must ~~shall~~ be computed by the ~~such~~ method that ~~as in the opinion of~~ the department determines most fairly reflects income.

(2) If a taxpayer's method of accounting is changed for federal income tax purposes, the taxpayer's method of accounting for purposes of this code must ~~shall~~ be similarly changed.

~~(3) Any taxpayer which has elected for federal income tax purposes to report any portion of its income on the completed contract method of accounting under Treasury Regulation 1.451-3(b)(2) may elect to return the income so reported on the percentage of completion method of accounting under Treasury Regulation 1.451-3(b)(1), provided the taxpayer regularly~~


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~~maintains its books of account and reports to its shareholders on the percentage of completion method. The election provided by this subsection shall be allowed only if it is made, in such manner as the department may prescribe, not later than the due date, including any extensions thereof, for filing a return for the taxpayer's first taxable year under this code in which a portion of its income is returned on the completed contract method of accounting for federal tax purposes. An election made pursuant to this subsection shall apply to all subsequent taxable years of the taxpayers unless the department consents in writing to its revocation.~~

Section 19. Subsection (4) is added to section 220.735, Florida Statutes, to read:

220.735 Production of witnesses and records.—

(4) The failure of a taxpayer to provide documents available to, or required to be kept by, the taxpayer and requested by a subpoena issued under this section creates a rebuttable presumption that the resulting proposed final agency action by the department, as to the requested documents, is correct and that the requested documents not produced by the taxpayer would be adverse to the taxpayer's position as to the proposed final agency action. If a taxpayer fails to provide documents requested by a subpoena issued under this section, the department may determine the amount of tax due according to its best judgement and may issue a notice of deficiency to the taxpayer, setting forth the amount of tax, interest, and any penalties proposed to be assessed. The department shall inform the taxpayer of the reason for the estimate and the information and methodology used to derive the estimate. The assessment

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shall be considered prima facie correct, and the taxpayer shall have the burden of showing any error in it.

Section 20. Paragraph (e) of subsection (3) of section 443.131, Florida Statutes, is amended to read:

443.131 Contributions.—

(3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT EXPERIENCE.—

(e) *Assignment of variations from the standard rate.*—

1. As used in this paragraph, the terms "total benefit payments," "benefits paid to an individual," and "benefits charged to the employment record of an employer" mean the amount of benefits paid to individuals multiplied by:

a. For benefits paid before ~~prior to~~ July 1, 2007, 1.

b. For benefits paid during the period beginning on July 1, 2007, and ending March 31, 2011, 0.90.

c. For benefits paid after March 31, 2011, 1.

d. For benefits paid during the period beginning April 1, 2020, and ending December 31, 2020, 0.

e. For benefits paid during the period beginning January 1, 2021, and ending June 30, 2021, 1, except as otherwise adjusted in accordance with paragraph (f).

2. For the calculation of contribution rates effective January 1, 2012, and thereafter:

a. The tax collection service provider shall assign a variation from the standard rate of contributions for each calendar year to each eligible employer. In determining the contribution rate, varying from the standard rate to be assigned each employer, adjustment factors computed under sub-sub-subparagraphs (I)-(IV) are added to the benefit ratio. This



addition shall be accomplished in two steps by adding a variable adjustment factor and a final adjustment factor. The sum of these adjustment factors computed under sub-sub-subparagraphs (I)-(IV) shall first be algebraically summed. The sum of these adjustment factors shall next be divided by a gross benefit ratio determined as follows: Total benefit payments for the 3-year period described in subparagraph (b)3. are charged to employers eligible for a variation from the standard rate, minus excess payments for the same period, divided by taxable payroll entering into the computation of individual benefit ratios for the calendar year for which the contribution rate is being computed. The ratio of the sum of the adjustment factors computed under sub-sub-subparagraphs (I)-(IV) to the gross benefit ratio is multiplied by each individual benefit ratio that is less than the maximum contribution rate to obtain variable adjustment factors; except that if the sum of an employer’s individual benefit ratio and variable adjustment factor exceeds the maximum contribution rate, the variable adjustment factor is reduced in order for the sum to equal the maximum contribution rate. The variable adjustment factor for each of these employers is multiplied by his or her taxable payroll entering into the computation of his or her benefit ratio. The sum of these products is divided by the taxable payroll of the employers who entered into the computation of their benefit ratios. The resulting ratio is subtracted from the sum of the adjustment factors computed under sub-sub-subparagraphs (I)-(IV) to obtain the final adjustment factor. The variable adjustment factors and the final adjustment factor must be computed to five decimal places and rounded to the


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fourth decimal place. This final adjustment factor is added to the variable adjustment factor and benefit ratio of each employer to obtain each employer's contribution rate. An employer's contribution rate may not, however, be rounded to less than 0.1 percent. Regardless of whether subparagraph 5. is repealed as provided in subparagraph 6., in determining the contribution rate for rates effective January 1, 2021, through December 31, 2025, varying from the standard rate that would otherwise ~~to~~ be assigned, the computation shall exclude any benefit that is excluded by the multipliers under subparagraph (b)2. and subparagraph 1. and ~~The computation of the contribution rate, varying from the standard rate to be assigned,~~ shall also exclude any benefit paid as a result of a governmental order related to COVID-19 to close or reduce capacity of a business before the date of the repeal. In addition, the contribution rate for the 2021 and 2022 calendar years shall be calculated without the application of the positive adjustment factor in sub-sub-subparagraph (III).

(I) An adjustment factor for noncharge benefits is computed to the fifth decimal place and rounded to the fourth decimal place by dividing the amount of noncharge benefits during the 3-year period described in subparagraph (b)3. by the taxable payroll of employers eligible for a variation from the standard rate who have a benefit ratio for the current year which is less than the maximum contribution rate. For purposes of computing this adjustment factor, the taxable payroll of these employers is the taxable payrolls for the 3 years ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of the same calendar year. As used in


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this sub-sub-subparagraph, the term "noncharge benefits" means benefits paid to an individual, as adjusted pursuant to subparagraph (b)2. and subparagraph 1., from the Unemployment Compensation Trust Fund which were not charged to the employment record of any employer, but excluding any benefit paid as a result of a governmental order related to COVID-19 to close or reduce capacity of a business.

(II) An adjustment factor for excess payments is computed to the fifth decimal place, and rounded to the fourth decimal place by dividing the total excess payments during the 3-year period described in subparagraph (b)3. by the taxable payroll of employers eligible for a variation from the standard rate who have a benefit ratio for the current year which is less than the maximum contribution rate. For purposes of computing this adjustment factor, the taxable payroll of these employers is the same figure used to compute the adjustment factor for noncharge benefits under sub-sub-subparagraph (I). As used in this sub-subparagraph, the term "excess payments" means the amount of benefits charged to the employment record of an employer, as adjusted pursuant to subparagraph (b)2. and subparagraph 1., during the 3-year period described in subparagraph (b)3., but excluding any benefit paid as a result of a governmental order related to COVID-19 to close or reduce capacity of a business, less the product of the maximum contribution rate and the employer's taxable payroll for the 3 years ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of the same calendar year. As used in this sub-sub-subparagraph, the term "total excess payments" means the sum of the individual employer excess payments for



1171 those employers that were eligible for assignment of a
1172 contribution rate different from the standard rate.
1173 (III) With respect to computing a positive adjustment
1174 factor:
1175 (A) Beginning January 1, 2012, if the balance of the
1176 Unemployment Compensation Trust Fund on September 30 of the
1177 calendar year immediately preceding the calendar year for which
1178 the contribution rate is being computed is less than 4 percent
1179 of the taxable payrolls for the year ending June 30 as reported
1180 to the tax collection service provider by September 30 of that
1181 calendar year, a positive adjustment factor shall be computed.
1182 The positive adjustment factor is computed annually to the fifth
1183 decimal place and rounded to the fourth decimal place by
1184 dividing the sum of the total taxable payrolls for the year
1185 ending June 30 of the current calendar year as reported to the
1186 tax collection service provider by September 30 of that calendar
1187 year into a sum equal to one-fifth of the difference between the
1188 balance of the fund as of September 30 of that calendar year and
1189 the sum of 5 percent of the total taxable payrolls for that
1190 year. The positive adjustment factor remains in effect for
1191 subsequent years until the balance of the Unemployment
1192 Compensation Trust Fund as of September 30 of the year
1193 immediately preceding the effective date of the contribution
1194 rate equals or exceeds 4 percent of the taxable payrolls for the
1195 year ending June 30 of the current calendar year as reported to
1196 the tax collection service provider by September 30 of that
1197 calendar year.
1198 (B) Beginning January 1, 2018, and for each year
1199 thereafter, the positive adjustment shall be computed by


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dividing the sum of the total taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year into a sum equal to one-fourth of the difference between the balance of the fund as of September 30 of that calendar year and the sum of 5 percent of the total taxable payrolls for that year. The positive adjustment factor remains in effect for subsequent years until the balance of the Unemployment Compensation Trust Fund as of September 30 of the year immediately preceding the effective date of the contribution rate equals or exceeds 4 percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year.

(IV) If, beginning January 1, 2015, and each year thereafter, the balance of the Unemployment Compensation Trust Fund as of September 30 of the year immediately preceding the calendar year for which the contribution rate is being computed exceeds 5 percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year, a negative adjustment factor must be computed. The negative adjustment factor shall be computed annually beginning on January 1, 2015, and each year thereafter, to the fifth decimal place and rounded to the fourth decimal place by dividing the sum of the total taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of the calendar year into a sum equal to one-fourth of the difference between


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the balance of the fund as of September 30 of the current calendar year and 5 percent of the total taxable payrolls of that year. The negative adjustment factor remains in effect for subsequent years until the balance of the Unemployment Compensation Trust Fund as of September 30 of the year immediately preceding the effective date of the contribution rate is less than 5 percent, but more than 4 percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year. The negative adjustment authorized by this section is suspended in any calendar year in which repayment of the principal amount of an advance received from the federal Unemployment Compensation Trust Fund under 42 U.S.C. s. 1321 is due to the Federal Government.

(V) The maximum contribution rate that may be assigned to an employer is 5.4 percent, except employers participating in an approved short-time compensation plan may be assigned a maximum contribution rate that is 1 percent greater than the maximum contribution rate for other employers in any calendar year in which short-time compensation benefits are charged to the employer’s employment record.

(VI) As used in this subsection, “taxable payroll” shall be determined by excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year in excess of the first $7,000. Beginning January 1, 2012, “taxable payroll” shall be determined by excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year as described in s. 443.1217(2). For the purposes of the employer rate calculation


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that will take effect in January 1, 2012, and in January 1, 2013, the tax collection service provider shall use the data available for taxable payroll from 2009 based on excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year in excess of the first $7,000, and from 2010 and 2011, the data available for taxable payroll based on excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year in excess of the first $8,500.

b. If the transfer of an employer's employment record to an employing unit under paragraph (g) which, before the transfer, was an employer, the tax collection service provider shall recompute a benefit ratio for the successor employer based on the combined employment records and reassign an appropriate contribution rate to the successor employer effective on the first day of the calendar quarter immediately after the effective date of the transfer.

3. The tax collection service provider shall reissue rates for the 2021 calendar year. However, an employer shall continue to timely file its employer's quarterly reports and pay the contributions due in a timely manner in accordance with the rules of the Department of Economic Opportunity. The Department of Revenue shall post the revised rates on its website to enable employers to securely review the revised rates. For contributions for the first quarter of the 2021 calendar year, if any employer remits to the tax collection service provider an amount in excess of the amount that would be due as calculated pursuant to this paragraph, the tax collection service provider shall refund the excess amount from the amount erroneously


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collected. Notwithstanding s. 443.141(6), refunds issued through August 31, 2021, for first quarter 2021 contributions must be paid from the General Revenue Fund.

4. The tax collection service provider shall calculate and assign contribution rates effective January 1, 2022, through December 31, 2022, excluding any benefit charge that is excluded by the multipliers under subparagraph (b)2. and subparagraph 1.; without the application of the positive adjustment factor in sub-sub-subparagraph 2.a.(III); and without the inclusion of any benefit charge directly related to COVID-19 as a result of a governmental order to close or reduce capacity of a business, as determined by the Department of Economic Opportunity, for each employer ~~who is~~ eligible for a variation from the standard rate pursuant to paragraph (d). The Department of Economic Opportunity shall provide the tax collection service provider with all necessary benefit charge information by August 1, 2021, including specific information for adjustments related to COVID-19 charges resulting from a governmental order to close or reduce capacity of a business, to enable the tax collection service provider to calculate and issue tax rates effective January 1, 2022. The tax collection service provider shall calculate and post rates for the 2022 calendar year by March 1, 2022.

5. Subject to subparagraph 6., the tax collection service provider shall calculate and assign contribution rates effective January 1, 2023, through December 31, 2025, excluding any benefit charge that is excluded by the multipliers under subparagraph (b)2. and subparagraph 1.; without the application of the positive adjustment factor in sub-sub-subparagraph


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2.a.(III); and without the inclusion of any benefit charge directly related to COVID-19 as a result of a governmental order to close or reduce capacity of a business, as determined by the Department of Economic Opportunity, for each employer ~~who is~~ eligible for a variation from the standard rate pursuant to paragraph (d). The Department of Economic Opportunity shall provide the tax collection service provider with all necessary benefit charge information by August 1 of each year, including specific information for adjustments related to COVID-19 charges resulting from a governmental order to close or reduce capacity of a business, to enable the tax collection service provider to calculate and issue tax rates effective the following January.

6. If the balance of the Unemployment Compensation Trust Fund on June 30 of any year exceeds $4,071,519,600, subparagraph 5. is repealed for rates effective the following years. The Office of Economic and Demographic Research shall advise the tax collection service provider of the balance of the trust fund on June 30 by August 1 of that year. After the repeal of subparagraph 5. and notwithstanding the dates specified in that subparagraph, the tax collection service provider shall calculate and assign contribution rates for each subsequent calendar year as otherwise provided in this section.

Section 21. Paragraph (a) of subsection (9) of section 443.171, Florida Statutes, is amended to read:

443.171 Department of Economic Opportunity and commission; powers and duties; records and reports; proceedings; state-federal cooperation.—

(9) STATE-FEDERAL COOPERATION.—

(a)1. In the administration of this chapter, the Department

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of Economic Opportunity and its tax collection service provider shall cooperate with the United States Department of Labor to the fullest extent consistent with this chapter and shall take those actions, through the adoption of appropriate rules, administrative methods, and standards, necessary to secure for this state all advantages available under the provisions of federal law relating to reemployment assistance.

2. In the administration of the provisions in s. 443.1115, which are enacted to conform with the Federal-State Extended Unemployment Compensation Act of 1970, the department shall take those actions necessary to ensure that those provisions are interpreted and applied to meet the requirements of the federal act as interpreted by the United States Department of Labor and to secure for this state the full reimbursement of the federal share of extended benefits paid under this chapter which is reimbursable under the federal act.

3. The department and its tax collection service provider shall comply with the regulations of the United States Department of Labor relating to the receipt or expenditure by this state of funds granted under federal law; shall submit the reports in the form and containing the information the United States Department of Labor requires; and shall comply with directions of the United States Department of Labor necessary to assure the correctness and verification of these reports.

4. The department and its tax collection service provider shall comply with the requirements of the federal Treasury Offset Program as it pertains to the recovery of unemployment compensation debts as required by the United States Department of Labor pursuant to 26 U.S.C. s. 6402. The department or the



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tax collection service provider may adopt rules to implement this subparagraph.

Section 22. 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 tax administration; amending s. 72.011, F.S.; prohibiting taxpayers from submitting certain records in tax proceedings under certain circumstances; providing construction; amending s. 120.80, F.S.; prohibiting taxpayers from submitting certain records in tax proceedings under certain circumstances; providing construction; amending s. 202.34, F.S.; authorizing the Department of Revenue to respond to contact initiated by taxpayers to discuss audits; authorizing taxpayers to provide records and other information to the department; authorizing the department to examine documentation and other information; providing construction; requiring taxpayers to object to premature audits within a certain timeframe; providing that a tolling period is considered lifted under certain circumstances; authorizing the department to adopt rules; amending ss. 202.36, 206.14, 211.125, 212.14, and 220.735, F.S.; creating rebuttable presumptions regarding proposed final agency action by the department;


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authorizing the department to make assessments and determine taxes using specified methods under certain circumstances; requiring the department to inform the taxpayer of certain information; providing construction; amending s. 206.9931, F.S.; deleting obsolete language; amending s. 212.05, F.S.; clarifying conditions for application of an exemption for sales taxes for certain nonresident purchasers of boats or aircraft; revising requirements for an affidavit; amending s. 212.13, F.S.; defining the terms "dealer," "division," and "transferor"; requiring dealers to maintain specified records; authorizing the department to issue written requests for such records under certain circumstances; authorizing the department to suspend resale certificates issued to dealers under certain circumstances; specifying procedures for suspension of resale certificates; providing construction; specifying procedures for suspension and revocation of licenses of certain dealers under certain circumstances; requiring the department to publish certain information regarding dealers with suspended resale certificates; prohibiting transferors from accepting orders from or delivering alcoholic beverages to dealers with suspended resale certificates within a specified timeframe; authorizing the department to adopt rules; authorizing the department to respond to contact initiated by taxpayers to discuss audits; authorizing taxpayers to


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provide records and other information; authorizing the department to examine documentation and other information; providing construction; requiring taxpayers to object in writing to premature audits within a certain timeframe; providing that a tolling period is considered lifted under certain circumstances; authorizing the department to adopt rules; amending s. 213.051, F.S.; authorizing the department to serve subpoenas on businesses registered with the department; providing construction; amending s. 215.053, F.S.; requiring the department to publish certain information regarding dealers with suspended resale certificates; requiring the department to update such information; authorizing the department to adopt rules; amending s. 213.06, F.S.; revising the period in which, and conditions under which, the executive director of the department may adopt emergency rules; providing for an exemption from the Administrative Procedure Act for any such emergency rules; specifying conditions regarding the effectiveness and the renewal of emergency rules; providing construction; amending s. 213.21, F.S.; providing for tolling of the statute of limitations upon the issuance of assessments, rather than final assessments; authorizing a taxpayer’s liability to be settled or compromised under certain circumstances; creating a rebuttable presumption; conforming a provision to changes made by the act; specifying the conditions for the department to consider requests to


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settle or compromise any tax, interest, penalty, or other liability; providing construction; amending s. 213.34, F.S.; revising audit procedures of the department; authorizing the department to adopt rules; requiring the department to refund any overpayments; amending s. 213.345, F.S.; specifying conditions under which a period is tolled during an audit; providing construction; amending s. 213.67, F.S.; authorizing the executive director of the department or his or her designee to include additional daily accrued interest, costs, and fees in a garnishment levy notice; revising methods for delivery of levy notices; amending s. 220.42, F.S.; deleting obsolete language; amending s. 443.131, F.S.; revising exclusions of certain benefit charges from the employer reemployment assistance contribution rate calculation; amending s. 443.171, F.S.; requiring the department and its tax collection service provider to comply with requirements of the federal Treasury Offset Program; authorizing the department or the tax collection service provider to adopt rules; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2022	.	
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The Committee on Appropriations (Gruters) recommended the following:

Senate Amendment to Amendment (604478)

Delete line 700

and insert:

the business from that address within 30 days before issuance of

By the Committee on Finance and Tax; and Senator Gruters

593-02950-22 20221382c1

A bill to be entitled

An act relating to tax administration; amending s. 72.011, F.S.; prohibiting taxpayers from submitting certain records in tax proceedings under certain circumstances; amending s. 120.80, F.S.; prohibiting taxpayers from submitting certain records in tax proceedings under certain circumstances; amending s. 202.34, F.S.; authorizing the Department of Revenue to respond to contact initiated by taxpayers to discuss audits; authorizing taxpayers to provide records and other information to the department; authorizing the department to examine documentation and other information; providing construction; requiring taxpayers to object to premature audits within a certain timeframe; providing that a tolling period is considered lifted under certain circumstances; authorizing the department to adopt rules; amending ss. 202.36, 206.14, 211.125, 212.14, and 220.735, F.S.; creating rebuttable presumptions regarding proposed final agency action by the department; authorizing the department to make assessments and determine taxes using specified methods under certain circumstances; requiring the department to inform the taxpayer of certain information; providing construction; amending s. 206.9931, F.S.; deleting obsolete language; amending s. 212.05, F.S.; clarifying conditions for application of an exemption for sales taxes for certain nonresident purchasers of boats or aircraft; revising requirements for an

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

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affidavit; amending s. 212.13, F.S.; defining the terms "dealer," "division," and "transferor"; requiring dealers to maintain specified records; authorizing the department to issue written requests for such records under certain circumstances; authorizing the department to suspend resale certificates issued to dealers under certain circumstances; specifying procedures for suspension of resale certificates; providing construction; requiring the department to notify the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation and dealers upon dealers' failure to comply with department requests for records; requiring the department to publish certain information regarding dealers with suspended resale certificates; authorizing transferors to discontinue accepting orders from dealers with suspended resale certificates within a specified timeframe; providing construction; authorizing the department to adopt rules; authorizing the department to respond to contact initiated by taxpayers to discuss audits; authorizing taxpayers to provide records and other information; authorizing the department to examine documentation and other information; providing construction; requiring taxpayers to object in writing to premature audits within a certain timeframe; providing that a tolling period is considered lifted under certain circumstances; authorizing the department to adopt rules; amending s. 213.051, F.S.;

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

authorizing the department to serve subpoenas on businesses registered with the department; providing construction; amending s. 215.053, F.S.; authorizing the department to publish certain information regarding dealers with suspended resale certificates; requiring the department to update such information; authorizing the department to adopt rules; amending s. 213.06, F.S.; revising the period in which, and conditions under which, the executive director of the department may adopt emergency rules; providing for an exemption from the Administrative Procedure Act for any such emergency rules; specifying conditions regarding the effectiveness and the renewal of emergency rules; providing construction; amending s. 213.21, F.S.; providing for tolling of the statute of limitations upon the issuance of assessments, rather than final assessments; authorizing a taxpayer's liability to be settled or compromised under certain circumstances; creating a rebuttable presumption; conforming a provision to changes made by the act; specifying the conditions for the department to consider requests to settle or compromise any tax, interest, penalty, or other liability; providing construction; amending s. 213.34, F.S.; revising audit procedures of the department; authorizing the department to adopt rules; requiring the department to refund any overpayments; amending s. 213.345, F.S.; specifying conditions under which a period is tolled during an audit; providing construction; amending s.

213.67, F.S.; authorizing the executive director of the department or his or her designee to include additional daily accrued interest, costs, and fees in a garnishment levy notice; revising methods for delivery of levy notices; amending s. 220.42, F.S.; deleting obsolete language; amending s. 443.131, F.S.; excluding certain benefit charges from the employer reemployment assistance contribution rate calculation; amending s. 443.171, F.S.; requiring the department and its tax collection service provider to comply with requirements of the federal Treasury Offset Program; authorizing the department or the tax collection service provider to adopt rules; providing an effective date.

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

Section 1. Paragraph (c) is added to subsection (1) of section 72.011, Florida Statutes, to read:

72.011 Jurisdiction of circuit courts in specific tax matters; administrative hearings and appeals; time for commencing action; parties; deposits.—

(1)

(c) A taxpayer may not submit records pertaining to an assessment or refund claim as evidence in any proceeding under this section if those records were available to, or required to be kept by, the taxpayer and were not timely provided to the Department of Revenue after a written request for the records during the audit or protest period and before submission of a

petition for hearing pursuant to chapter 120 or the filing of an action under paragraph (a), unless the taxpayer demonstrates to the court or presiding officer good cause for its failure to previously provide such records to the department.

Section 2. Paragraph (b) of subsection (14) of section 120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.—

(14) DEPARTMENT OF REVENUE.—

(b) *Taxpayer contest proceedings.*—

1. In any administrative proceeding brought pursuant to this chapter as authorized by s. 72.011(1), the taxpayer shall be designated the "petitioner" and the Department of Revenue shall be designated the "respondent," except that for actions contesting an assessment or denial of refund under chapter 207, the Department of Highway Safety and Motor Vehicles shall be designated the "respondent," and for actions contesting an assessment or denial of refund under chapters 210, 550, 561, 562, 563, 564, and 565, the Department of Business and Professional Regulation shall be designated the "respondent."

2. In any such administrative proceeding, the applicable department's burden of proof, except as otherwise specifically provided by general law, shall be limited to a showing that an assessment has been made against the taxpayer and the factual and legal grounds upon which the applicable department made the assessment.

3.a. Before ~~Prior to~~ filing a petition under this chapter, the taxpayer shall pay to the applicable department the amount of taxes, penalties, and accrued interest assessed by that department which are not being contested by the taxpayer.

Failure to pay the uncontested amount shall result in the dismissal of the action and imposition of an additional penalty of 25 percent of the amount taxed.

b. The requirements of s. 72.011(2) and (3)(a) are jurisdictional for any action under this chapter to contest an assessment or denial of refund by the Department of Revenue, the Department of Highway Safety and Motor Vehicles, or the Department of Business and Professional Regulation.

4. Except as provided in s. 220.719, further collection and enforcement of the contested amount of an assessment for nonpayment or underpayment of any tax, interest, or penalty shall be stayed beginning on the date a petition is filed. Upon entry of a final order, an agency may resume collection and enforcement action.

5. The prevailing party, in a proceeding under ss. 120.569 and 120.57 authorized by s. 72.011(1), may recover all legal costs incurred in such proceeding, including reasonable attorney ~~attorney's~~ fees, if the losing party fails to raise a justiciable issue of law or fact in its petition or response.

6. Upon review pursuant to s. 120.68 of final agency action concerning an assessment of tax, penalty, or interest with respect to a tax imposed under chapter 212, or the denial of a refund of any tax imposed under chapter 212, if the court finds that the Department of Revenue improperly rejected or modified a conclusion of law, the court may award reasonable attorney ~~attorney's~~ fees and reasonable costs of the appeal to the prevailing appellant.

7. A taxpayer may not submit records pertaining to an assessment or refund claim as evidence in any proceeding brought

pursuant to this chapter as authorized by s. 72.011(1) if those records were available to, or required to be kept by, the taxpayer and were not timely provided to the Department of Revenue after a written request for the records during the audit or protest period and before submission of a petition for hearing under this chapter, unless the taxpayer demonstrates good cause to the presiding officer for its failure to previously provide such records to the department.

Section 3. Paragraph (f) is added to subsection (4) of section 202.34, Florida Statutes, and subsection (6) is added to that section, to read:

202.34 Records required to be kept; power to inspect; audit procedure.—

(4)

(f) Once the notification required by paragraph (a) is issued, the department, at any time, may respond to contact initiated by a taxpayer to discuss the audit, and the taxpayer may provide records or other information, electronically or otherwise, to the department. The department may examine, at any time, documentation and other information voluntarily provided by the taxpayer, its representative, or other parties; information already in the department's possession; or publicly available information. The department's examination of such information does not mean an audit has commenced if the review takes place within 60 days after the notice of intent to conduct an audit. The requirement in paragraph (a) does not limit the department in making initial contact with the taxpayer to confirm receipt of the notification or to confirm the date that the audit will begin. If the taxpayer has not previously waived

the 60-day notice period and believes the department commenced the audit prior to the 61st day, the taxpayer must object in writing to the department before the issuance of an assessment or the objection is waived. If the objection is not waived and it is determined that the audit was commenced before the 61st day after the issuance of the notice of intent to audit, the tolling period provided for in s. 213.345 is considered lifted for the number of days equal to the difference between the date the audit commenced and the 61st day after the date of the department's notice of intent to audit.

(6) The department may adopt rules to administer this section.

Section 4. Paragraph (a) of subsection (4) of section 202.36, Florida Statutes, is amended to read:

202.36 Departmental powers; hearings; distress warrants; bonds; subpoenas and subpoenas duces tecum.—

(4)(a) The department may issue subpoenas or subpoenas duces tecum compelling the attendance and testimony of witnesses and the production of books, records, written materials, and electronically recorded information. Subpoenas must be issued with the written and signed approval of the executive director or his or her designee on a written and sworn application by any employee of the department. The application must set forth the reason for the application, the name of the person subpoenaed, the time and place of appearance of the witness, and a description of any books, records, or electronically recorded information to be produced, together with a statement by the applicant that the department has unsuccessfully attempted other reasonable means of securing information and that the testimony

of the witness or the written or electronically recorded materials sought in the subpoena are necessary for the collection of taxes, penalty, or interest or the enforcement of the taxes levied or administered under this chapter. A subpoena shall be served in the manner provided by law and by the Florida Rules of Civil Procedure and shall be returnable only during regular business hours and at least 20 calendar days after the date of service of the subpoena. Any subpoena to which this subsection applies must identify the taxpayer to whom the subpoena relates and to whom the records pertain and must provide other information to enable the person subpoenaed to locate the records required under the subpoena. The department shall give notice to the taxpayer to whom the subpoena relates within 3 days after the day on which the service of the subpoena is made. Within 14 days after service of the subpoena, the person to whom the subpoena is directed may serve written objection to the inspection or copying of any of the designated materials. If objection is made, the department may not inspect or copy the materials, except pursuant to an order of the circuit court. If an objection is made, the department may petition any circuit court for an order to comply with the subpoena. The subpoena must contain a written notice of the right to object to the subpoena. Every subpoena served upon the witness or custodian of records must be accompanied by a copy of ~~the provisions of~~ this subsection. If a person refuses to obey a subpoena or subpoena duces tecum, the department may apply to any circuit court of this state to enforce compliance with the subpoena. Witnesses are entitled to be paid a mileage allowance and witness fees as authorized for witnesses in civil cases. The

failure of a taxpayer to provide documents available to, or required to be kept by, the taxpayer and requested by a subpoena issued under this section creates a rebuttable presumption that the resulting proposed final agency action by the department, as to the requested documents, is correct and that the requested documents not produced by the taxpayer would be adverse to the taxpayer's position as to the proposed final agency action. If a taxpayer fails to provide documents requested by a subpoena issued under this section, the department may make an assessment from an estimate based upon the best information then available to it for the taxable period of retail sales of the taxpayer, together with any accrued interest and penalties. The department shall inform the taxpayer of the reason for the estimate and the information and methodology used to derive the estimate. Such assessment shall be deemed prima facie correct, and the burden to show the contrary rests upon the dealer or other person. The presumption and authority to use estimates for the purpose of assessment under this paragraph do not apply solely because a taxpayer or its representative requests a conference to negotiate the production of a sample of records demanded by a subpoena.

Section 5. Subsection (4) of section 206.14, Florida Statutes, is amended to read:

206.14 Inspection of records; audits; hearings; forms; rules and regulations.—

(4) If any person unreasonably refuses access to such records, books, papers or other documents, or equipment, or if any person fails or refuses to obey such subpoenas duces tecum or to testify, except for lawful reasons, before the department

or any of its authorized agents, the department shall certify the names and facts to the clerk of the circuit court of any county; and the circuit court shall enter such order against such person in the premises as the enforcement of this law and justice requires. The failure of a taxpayer to provide documents available to, or required to be kept by, the taxpayer and requested by a subpoena issued under this section creates a rebuttable presumption that the resulting proposed final agency action by the department, as to the requested documents, is correct and that the requested documents not produced by the taxpayer would be adverse to the taxpayer's position as to the proposed final agency action. If a taxpayer fails to provide documents requested by a subpoena issued under this section, the department may make an assessment from an estimate of the taxpayer's liability based upon the best information then available to it. The department shall inform the taxpayer of the reason for the estimate and the information and methodology used to derive the estimate. Such assessment shall be deemed prima facie correct, and the burden to show the contrary rests upon the dealer or other person. The presumption and authority to use estimates for the purpose of assessment under this paragraph do not apply solely because a taxpayer or its representative requests a conference to negotiate the production of a sample of records demanded by a subpoena.

Section 6. Subsection (1) of section 206.9931, Florida Statutes, is amended to read:

206.9931 Administrative provisions.—

(1) Any person producing in, importing into, or causing to be imported into this state taxable pollutants for sale, use, or

otherwise and who is not registered or licensed pursuant to other parts of this chapter is hereby required to register and become licensed for the purposes of this part. Such person shall register as either a producer or importer of pollutants and shall be subject to all applicable registration and licensing provisions of this chapter, as if fully set out in this part and made expressly applicable to the taxes imposed herein, including, but not limited to, ss. 206.02, 206.021, 206.022, 206.025, 206.03, 206.04, and 206.05. For the purposes of this section, registrations required exclusively for this part shall be made within 90 days of July 1, 1986, for existing businesses, or before ~~prior to~~ the first production or importation of pollutants for businesses created after July 1, 1986. ~~The fee for registration shall be $30.~~ Failure to timely register is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 7. Paragraph (b) of subsection (3) of section 211.125, Florida Statutes, is amended to read:

211.125 Administration of law; books and records; powers of the department; refunds; enforcement provisions; confidentiality.—

(3)

(b) The department may ~~shall have the power to~~ inspect or examine the books, records, or papers of any operator, producer, purchaser, royalty interest owner, taxpayer, or transporter of taxable products which are reasonably required for the purposes of this part and may require such person to testify under oath or affirmation or to answer competent questions touching upon such person's business or production of taxable products in this

~~the~~ state.

1. The department may issue subpoenas to compel third parties to testify or to produce records or other evidence held by them.

2. Any duly authorized representative of the department may administer an oath or affirmation.

3. If any person fails to comply with a request of the department for the inspection of records, fails to give testimony or respond to competent questions, or fails to comply with a subpoena, a circuit court having jurisdiction over such person may, upon application by the department, issue orders necessary to secure compliance. The failure of a taxpayer to provide documents available to, or required to be kept by, the taxpayer and requested by a subpoena issued under this section creates a rebuttable presumption that the resulting proposed final agency action by the department, as to the requested documents, is correct and that the requested documents not produced by the taxpayer would be adverse to the taxpayer's position as to the proposed final agency action. If a taxpayer fails to provide documents requested by a subpoena issued under this section, the department may make an assessment from an estimate based upon the best information then available to it. The department shall inform the taxpayer of the reason for the estimate and the information and methodology used to derive the estimate. Such assessment shall be considered prima facie correct, and the taxpayer shall have the burden of showing any error in it.

Section 8. Paragraph (a) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making or facilitating remote sales; who rents or furnishes any of the things or services taxable under this chapter; or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(a)1.a. At the rate of 6 percent of the sales price of each item or article of tangible personal property when sold at retail in this state, computed on each taxable sale for the purpose of remitting the amount of tax due the state, and including each and every retail sale.

b. Each occasional or isolated sale of an aircraft, boat, mobile home, or motor vehicle of a class or type which is required to be registered, licensed, titled, or documented in this state or by the United States Government is ~~shall be~~ subject to tax at the rate provided in this paragraph. The department shall by rule adopt any nationally recognized publication for valuation of used motor vehicles as the reference price list for any used motor vehicle which is required to be licensed pursuant to s. 320.08(1), (2), (3)(a), (b), (c), or (e), or (9). If any party to an occasional or isolated sale of such a vehicle reports to the tax collector a sales price which is less than 80 percent of the average loan

price for the specified model and year of such vehicle as listed in the most recent reference price list, the tax levied under this paragraph shall be computed by the department on such average loan price unless the parties to the sale have provided to the tax collector an affidavit signed by each party, or other substantial proof, stating the actual sales price. Any party to such sale who reports a sales price less than the actual sales price is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. The department shall collect or attempt to collect from such party any delinquent sales taxes. In addition, such party shall pay any tax due and any penalty and interest assessed plus a penalty equal to twice the amount of the additional tax owed. Notwithstanding any other provision of law, the Department of Revenue may waive or compromise any penalty imposed pursuant to this subparagraph.

2. This paragraph does not apply to the sale of a boat or aircraft by or through a registered dealer under this chapter to a purchaser who, at the time of taking delivery, is a nonresident of this state, does not make his or her permanent place of abode in this state, and is not engaged in carrying on in this state any employment, trade, business, or profession in which the boat or aircraft will be used in this state, or is a corporation none of the officers or directors of which is a resident of, or makes his or her permanent place of abode in, this state, or is a noncorporate entity that has no individual vested with authority to participate in the management, direction, or control of the entity's affairs who is a resident of, or makes his or her permanent abode in, this state. For purposes of this exemption, either a registered dealer acting on

his or her own behalf as seller, a registered dealer acting as broker on behalf of a seller, or a registered dealer acting as broker on behalf of the nonresident purchaser may be deemed to be the selling dealer. This exemption is ~~shall~~ not ~~be~~ allowed unless:

a. The nonresident purchaser removes a qualifying boat, as described in sub-subparagraph f., from this ~~the~~ state within 90 days after the date of purchase or extension, or the nonresident purchaser removes a nonqualifying boat or an aircraft from this state within 10 days after the date of purchase or, when the boat or aircraft is repaired or altered, within 20 days after completion of the repairs or alterations; or if the aircraft will be registered in a foreign jurisdiction and:

(I) Application for the aircraft's registration is properly filed with a civil airworthiness authority of a foreign jurisdiction within 10 days after the date of purchase;

(II) The nonresident purchaser removes the aircraft from this ~~the~~ state to a foreign jurisdiction within 10 days after the date the aircraft is registered by the applicable foreign airworthiness authority; and

(III) The aircraft is operated in this ~~the~~ state solely to remove it from this ~~the~~ state to a foreign jurisdiction.

For purposes of this sub-subparagraph, the term "foreign jurisdiction" means any jurisdiction outside of the United States or any of its territories;

b. The nonresident purchaser, within 90 days after ~~from~~ the date of departure, provides the department with written proof that the nonresident purchaser licensed, registered, titled, or

documented the boat or aircraft outside this ~~the~~ state. If such written proof is unavailable, within 90 days the nonresident purchaser must ~~shall~~ provide proof that the nonresident purchaser applied for such license, title, registration, or documentation. The nonresident purchaser shall forward to the department proof of title, license, registration, or documentation upon receipt;

c. The nonresident purchaser, within 30 days after removing the boat or aircraft from this state ~~Florida~~, furnishes the department with proof of removal in the form of receipts for fuel, dockage, slippage, tie-down, or hangaring from outside of this state ~~Florida~~. The information so provided must clearly and specifically identify the boat or aircraft;

d. The selling dealer, within 30 days after the date of sale, provides to the department a copy of the sales invoice, closing statement, bills of sale, and the original affidavit signed by the nonresident purchaser affirming that the nonresident purchaser qualifies for exemption from sales tax pursuant to this subparagraph and attesting that the nonresident purchaser will provide the documentation required to substantiate the exemption claimed under this subparagraph ~~attesting that he or she has read the provisions of this section~~;

e. The seller makes a copy of the affidavit a part of his or her record for as long as required by s. 213.35; and

f. Unless the nonresident purchaser of a boat of 5 net tons of admeasurement or larger intends to remove the boat from this state within 10 days after the date of purchase or when the boat is repaired or altered, within 20 days after completion of the

repairs or alterations, the nonresident purchaser applies to the selling dealer for a decal which authorizes 90 days after the date of purchase for removal of the boat. The nonresident purchaser of a qualifying boat may apply to the selling dealer within 60 days after the date of purchase for an extension decal that authorizes the boat to remain in this state for an additional 90 days, but not more than a total of 180 days, before the nonresident purchaser is required to pay the tax imposed by this chapter. The department is authorized to issue decals in advance to dealers. The number of decals issued in advance to a dealer shall be consistent with the volume of the dealer's past sales of boats which qualify under this sub-subparagraph. The selling dealer or his or her agent shall mark and affix the decals to qualifying boats in the manner prescribed by the department, before delivery of the boat.

(I) The department is hereby authorized to charge dealers a fee sufficient to recover the costs of decals issued, except the extension decal shall cost $425.

(II) The proceeds from the sale of decals will be deposited into the administrative trust fund.

(III) Decals shall display information to identify the boat as a qualifying boat under this sub-subparagraph, including, but not limited to, the decal's date of expiration.

(IV) The department is authorized to require dealers who purchase decals to file reports with the department and may prescribe all necessary records by rule. All such records are subject to inspection by the department.

(V) Any dealer or his or her agent who issues a decal falsely, fails to affix a decal, mismarks the expiration date of

a decal, or fails to properly account for decals will be considered prima facie to have committed a fraudulent act to evade the tax and will be liable for payment of the tax plus a mandatory penalty of 200 percent of the tax, and shall be liable for fine and punishment as provided by law for a conviction of a misdemeanor of the first degree, as provided in s. 775.082 or s. 775.083.

(VI) Any nonresident purchaser of a boat who removes a decal before permanently removing the boat from this ~~the~~ state, or defaces, changes, modifies, or alters a decal in a manner affecting its expiration date before its expiration, or who causes or allows the same to be done by another, will be considered prima facie to have committed a fraudulent act to evade the tax and will be liable for payment of the tax plus a mandatory penalty of 200 percent of the tax, and shall be liable for fine and punishment as provided by law for a conviction of a misdemeanor of the first degree, as provided in s. 775.082 or s. 775.083.

(VII) The department is authorized to adopt rules necessary to administer and enforce this subparagraph and to publish the necessary forms and instructions.

(VIII) The department is hereby authorized to adopt emergency rules pursuant to s. 120.54(4) to administer and enforce ~~the provisions of~~ this subparagraph.

If the nonresident purchaser fails to remove the qualifying boat from this state within the maximum 180 days after purchase or a nonqualifying boat or an aircraft from this state within 10 days after purchase or, when the boat or aircraft is repaired or

altered, within 20 days after completion of such repairs or alterations, or permits the boat or aircraft to return to this state within 6 months after ~~from~~ the date of departure, except as provided in s. 212.08(7)(fff), or if the nonresident purchaser fails to furnish the department with any of the documentation required by this subparagraph within the prescribed time period, the nonresident purchaser is ~~shall be~~ liable for use tax on the cost price of the boat or aircraft and, in addition thereto, payment of a penalty to the Department of Revenue equal to the tax payable. This penalty shall be in lieu of the penalty imposed by s. 212.12(2). The maximum 180-day period following the sale of a qualifying boat tax-exempt to a nonresident may not be tolled for any reason.

Section 9. Subsections (2) and (5) of section 212.13, Florida Statutes, are amended, and subsection (7) is added to that section, to read:

212.13 Records required to be kept; power to inspect; audit procedure.—

(2)(a) Each dealer, as defined in this chapter, shall secure, maintain, and keep as long as required by s. 213.35 a complete record of tangible personal property or services received, used, sold at retail, distributed or stored, leased or rented by said dealer, together with invoices, bills of lading, gross receipts from such sales, and other pertinent records and papers as may be required by the department for the reasonable administration of this chapter. All such records must be made available to the department at reasonable times and places and by reasonable means, including in an electronic format when so kept by the dealer. Any dealer subject to this chapter who

violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. If, however, any subsequent offense involves intentional destruction of such records with an intent to evade payment of or deprive the state of any tax revenues, such subsequent offense is a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(b)1. As used in this paragraph, the term:

a. "Dealer" means a dealer, as defined in s. 212.06, which is licensed under chapter 561.

b. "Division" means the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

c. "Transferor" means an entity or person, licensed under chapter 561, who sells and delivers alcoholic beverages to a dealer for purposes of resale.

2. Dealers shall maintain records of all monthly sales and all monthly purchases of alcoholic beverages and produce such records for inspection by the department. During the course of an audit, if the department has made a formal demand for such records and a dealer has failed to comply with such a demand, the department may issue a written request for such records to the dealer, allowing the dealer an additional 20 days to provide the requested records or show reasonable cause why the records cannot be produced. If the dealer fails to produce the requested records or show reasonable cause why the records cannot be produced, the department shall issue a notice of intent to suspend the dealer's resale certificate. The dealer shall then have 20 days to file a petition with the department challenging

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the proposed action pursuant to s. 120.569. If the dealer fails to timely file a petition or the department prevails in a proceeding challenging the notice, the department shall suspend the resale certificate. The failure of a dealer to comply with such a request is also deemed sufficient cause under s. 561.29(1)(a), and the department shall promptly notify the division and the dealer of such failure for further appropriate action by the division.

3. The department shall notify the division when a dealer's resale certificate is suspended, and shall publish a list of dealers whose resale certificates have been suspended as permitted by s. 213.053(21). The division shall include notice of such suspension in its license verification database, or provide a link to the department's published list from the division's license verification page.

4. A transferor is allowed 7 days, inclusive of any Saturday, Sunday, or legal holiday, after the date of publication to the department's list that the resale certificate of a dealer has been suspended to discontinue accepting orders from and delivering alcohol beverages to the dealer.

5. A transferor who sells alcoholic beverages to a dealer whose resale certificate has been suspended is not responsible for any tax, penalty, or interest due if the alcoholic beverages are delivered no more than 7 days, inclusive of any Saturday, Sunday, or legal holiday, after the date of publication of the suspension.

6. The department may adopt rules to implement this paragraph.

(5)(a) The department shall send written notification at

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least 60 days before ~~prior to~~ the date an auditor is scheduled to begin an audit, informing the taxpayer of the audit. The department is not required to give 60 days' prior notification of a forthcoming audit in any instance in which the taxpayer requests an emergency audit.

(b) Such written notification must ~~shall~~ contain:

1. The approximate date on which the auditor is scheduled to begin the audit.

2. A reminder that all of the records, receipts, invoices, resale certificates, and related documentation of the taxpayer must be made available to the auditor.

3. Any other requests or suggestions the department may deem necessary.

(c) Only records, receipts, invoices, resale certificates, and related documentation that ~~which~~ are available to the auditor when such audit begins are ~~shall be~~ deemed acceptable for the purposes of conducting such audit. A resale certificate containing a date before ~~prior to~~ the date the audit commences is ~~shall be~~ deemed acceptable documentation of the specific transaction or transactions which occurred in the past, for the purpose of conducting an audit.

(d) The provisions of this chapter concerning fraudulent or improper records, receipts, invoices, resale certificates, and related documentation ~~shall~~ apply when conducting any audit.

(e) The requirement in paragraph (a) of 60 days' written notification does not apply to the distress or jeopardy situations referred to in s. 212.14 or s. 212.15.

(f) Once the notification required by paragraph (a) is issued, the department, at any time, may respond to contact

initiated by a taxpayer to discuss the audit, and the taxpayer may provide documentation or other information, electronically or otherwise, to the department. The department may examine, at any time, documentation and other information voluntarily provided by the taxpayer, its representative, or other parties; information already in the department's possession; or publicly available information. The department's examination of such information does not mean an audit has commenced if the review takes place within 60 days after the notice of intent to conduct an audit. The requirement in paragraph (a) does not limit the department in making initial contact with the taxpayer to confirm receipt of the notification or to confirm the date that the audit will begin. If the taxpayer has not previously waived the 60-day notice period and believes the department commenced the audit prior to the 61st day, the taxpayer must object in writing to the department before the issuance of an assessment or else the objection is waived. If the objection is not waived and it is determined that the audit was commenced before the 61st day after the issuance of the notice of intent to audit, the tolling period provided for in s. 213.345 is considered lifted for the number of days equal to the difference between the date the audit commenced and the 61st day after the date of the department's notice of intent to audit.

(7) The department may adopt rules to administer this section.

Section 10. Paragraph (a) of subsection (7) of section 212.14, Florida Statutes, is amended to read:

212.14 Departmental powers; hearings; distress warrants; bonds; subpoenas and subpoenas duces tecum.—

(7)(a) For purposes of collection and enforcement of taxes, penalties, and interest levied under this chapter, the department may issue subpoenas or subpoenas duces tecum compelling the attendance and testimony of witnesses and the production of books, records, written materials, and electronically recorded information. Subpoenas shall be issued with the written and signed approval of the executive director or his or her designee on written and sworn application by any employee of the department. The application must set forth the reason for the application, the name of the person subpoenaed, the time and place of appearance of the witness, and a description of any books, records, or electronically recorded information to be produced, together with a statement by the applicant that the department has unsuccessfully attempted other reasonable means of securing information and that the testimony of the witness or the written or electronically recorded materials sought in the subpoena are necessary for the collection of taxes, penalty, or interest or the enforcement of the taxes levied under this chapter. A subpoena must ~~shall~~ be served in the manner provided by law and by the Florida Rules of Civil Procedure and is ~~shall be~~ returnable only during regular business hours and at least 20 calendar days after the date of service of the subpoena. Any subpoena to which this subsection applies must ~~shall~~ identify the taxpayer to whom the subpoena relates and to whom the records pertain and must ~~shall~~ provide other information to enable the person subpoenaed to locate the records required under the subpoena. The department shall give notice to the taxpayer to whom the subpoena relates within 3 days after ~~of~~ the day on which the service of the subpoena is

made. Within 14 days after service of the subpoena, the person to whom the subpoena is directed may serve written objection to inspection or copying of any of the designated materials. If objection is made, the department is ~~shall~~ not ~~be~~ entitled to inspect and copy the materials, except pursuant to an order of the circuit court. If an objection is made, the department may petition any circuit court for an order to comply with the subpoena. The subpoena must ~~shall~~ contain a written notice of the right to object to the subpoena. Every subpoena served upon the witness or records custodian must be accompanied by a copy of ~~the provisions of~~ this subsection. If a person refuses to obey a subpoena or subpoena duces tecum, the department may apply to any circuit court of this state to enforce compliance with the subpoena. Witnesses must ~~shall~~ be paid mileage and witness fees as authorized for witnesses in civil cases. The failure of a taxpayer to provide documents available to, or required to be kept by, the taxpayer and requested by a subpoena issued under this section creates a rebuttable presumption that the resulting proposed final agency action by the department, as to the requested documents, is correct and that the requested documents not produced by the taxpayer would be adverse to the taxpayer's position as to the proposed final agency action. If a taxpayer fails to provide documents requested by a subpoena issued under this section, the department may make an assessment from an estimate based upon the best information then available to it for the taxable period of retail sales of the taxpayer, together with any accrued interest and penalties. The department shall inform the taxpayer of the reason for the estimate and the information and methodology used to derive the estimate. Such

assessment shall be deemed prima facie correct, and the burden to show the contrary rests upon the dealer or other person. The presumption and authority to use estimates for the purpose of assessment under this paragraph do not apply solely because a taxpayer or its representative requests a conference to negotiate the production of a sample of records demanded by a subpoena.

Section 11. Section 213.051, Florida Statutes, is amended to read:

213.051 Service of subpoenas.—

(1) For the purpose of administering and enforcing ~~the provisions of~~ the revenue laws of this state, the executive director of the Department of Revenue, or any of his or her assistants designated in writing by the executive director, may ~~shall be authorized to~~ serve subpoenas and subpoenas duces tecum issued by the state attorney relating to investigations concerning the taxes enumerated in s. 213.05.

(2) In addition to the procedures for service prescribed by chapter 48, the department may serve subpoenas it issues pursuant to ss. 202.36, 206.14, 211.125, 212.14, and 220.735 upon any business registered with the department at the address on file with the department if it received correspondence from the business from that address within 30 days after issuance of the subpoena or if the address is listed with the Department of State Division of Corporations as a principal or business address. If a business' address is not in this state, service is made upon proof of delivery by certified mail or under the notice provisions of s. 213.0537.

Section 12. Present subsections (21) and (22) of section

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213.053, Florida Statutes, are redesignated as subsections (22) and (23), respectively, and a new subsection (21) is added to that section, to read:

213.053 Confidentiality and information sharing.—

(21)(a) The department may publish a list of dealers whose resale certificates have been suspended pursuant to s. 212.13(2)(b). The list may contain the name of the dealer, including the name under which the dealer does business; the address of the dealer; the dealer's employer identification number or other taxpayer identification number; and the date on which the dealer was added to the list.

(b) The department shall update the list daily as needed to reflect additions to and deletions from the list.

(c) The department may adopt rules to administer this subsection.

Section 13. Section 213.06, Florida Statutes, is amended to read:

213.06 Rules of department; circumstances requiring emergency rules.—

(1) The Department of Revenue may ~~has the authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of the revenue laws.

(2) The executive director of the department may adopt emergency rules pursuant to s. 120.54 on behalf of the department when the effective date of a legislative change occurs sooner than 120 ~~60~~ days after the close of a legislative session in which enacted or after the Governor approves or fails to veto the legislative change, whichever is later, and the change affects a tax rate or a collection or reporting procedure

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which affects a substantial number of dealers or persons subject to the tax change or procedure. The Legislature finds that such circumstances qualify as an exception to the prerequisite of a finding of immediate danger to the public health, safety, or welfare as set forth in s. 120.54(4)(a) and qualify as circumstances requiring an emergency rule. Emergency rules adopted under this subsection are exempt from s. 120.54(4)(c), remain in effect for 6 months or until replaced by rules adopted under the nonemergency rulemaking procedures of the Administrative Procedure Act, and may be renewed for no more than 3 additional 6-month periods during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(3) The grants of rulemaking authority in subsections (1) and (2) are sufficient to allow the department to adopt rules implementing all revenue laws administered by the department. Each revenue law administered by the department is an enabling statute authorizing the department to implement it, regardless of whether the enabling statute contains its own grant of rulemaking authority.

Section 14. Paragraph (b) of subsection (1) and paragraph (a) of subsection (3) of section 213.21, Florida Statutes, are amended, and subsections (11) and (12) are added to that section, to read:

213.21 Informal conferences; compromises.—

(1)

(b) The statute of limitations upon the issuance of ~~final~~ assessments and the period for filing a claim for refund as required by s. 215.26(2) for any transactions occurring during

the audit period shall be tolled during the period in which the taxpayer is engaged in a procedure under this section.

(3)(a) A taxpayer's liability for any tax or interest specified in s. 72.011(1) may be compromised by the department upon the grounds of doubt as to liability for or collectibility of such tax or interest. A taxpayer's liability for interest under any of the chapters specified in s. 72.011(1) shall be settled or compromised in whole or in part whenever or to the extent that the department determines that the delay in the determination of the amount due is attributable to the action or inaction of the department. A taxpayer's liability for penalties under any of the chapters specified in s. 72.011(1) greater than 25 percent of the tax must ~~may~~ be settled or compromised if ~~it is determined by~~ the department determines that the noncompliance is not due to ~~reasonable cause and not to~~ willful negligence, willful neglect, or fraud. In addition, a taxpayer's liability for penalties under any of the chapters specified in s. 72.011(1) up to and including 25 percent of the tax may be settled or compromised if the department determines that reasonable cause exists and the penalties greater than 25 percent of the tax were compromised because the noncompliance is not due to willful negligence, willful neglect, or fraud. There is a rebuttable presumption that a taxpayer's noncompliance is due to willful negligence, willful neglect, or fraud when adequate records as requested by the department are not provided to the department before the issuance of an assessment. The presumption may be rebutted by a showing of reasonable cause why adequate records as requested were not provided or were unavailable to the taxpayer. The facts and circumstances are

subject to de novo review ~~to determine the existence of reasonable cause~~ in any administrative proceeding or judicial action challenging an assessment of penalty under any of the chapters specified in s. 72.011(1). A taxpayer who establishes reasonable reliance on the written advice issued by the department to the taxpayer is ~~will be~~ deemed to have shown reasonable cause for the noncompliance. ~~In addition, a taxpayer's liability for penalties under any of the chapters specified in s. 72.011(1) in excess of 25 percent of the tax shall be settled or compromised if the department determines that the noncompliance is due to reasonable cause and not to willful negligence, willful neglect, or fraud.~~ The department shall maintain records of all compromises, and the records shall state the basis for the compromise. The records of compromise under this paragraph are ~~shall~~ not ~~be~~ subject to disclosure pursuant to s. 119.07(1) and are ~~shall be~~ considered confidential information governed by ~~the provisions of~~ s. 213.053.

(11) Following the expiration of time for a taxpayer to challenge an assessment or a denial of a refund as provided in s. 72.011, the department may consider a request to settle or compromise any tax, interest, penalty, or other liability under this section if the taxpayer demonstrates that the failure to initiate a timely challenge was due to a qualified event that directly impacted compliance with that section. For purposes of this subsection, a qualified event is limited to the occurrence of events during an audit or the expired protest period which were beyond the control of the taxpayer, including the death or life-threatening injury or illness of the taxpayer or an

immediate family member of the taxpayer; the death or life-threatening injury or illness of the responsible party that controlled, managed, or directed the affected business entity; acts of war or terrorism; natural disasters; fire; or other catastrophic loss. The department may not consider a request received more than 180 days after the expiration of time allowed under s. 72.011.

(12) Any decision by the department regarding a taxpayer's request to compromise or settle a liability under this section is not a final order subject to review under chapter 120.

Section 15. Section 213.34, Florida Statutes, is amended to read:

213.34 Authority to audit.—

(1) The Department of Revenue may ~~shall have the authority to~~ audit and examine the accounts, books, or records of all persons ~~who are~~ subject to a revenue law made applicable to this chapter, or otherwise placed under the control and administration of the department, for the purpose of ascertaining the correctness of any return which has been filed or payment which has been made, or for the purpose of making a return where none has been made.

(2) The department, or its duly authorized agents, may inspect such books and records necessary to ascertain a taxpayer's compliance with the revenue laws of this state, provided that the department's power to make an assessment or grant a refund has not terminated under s. 95.091(3).

(a) During the course of an audit, but before the issuance of an assessment other than a jeopardy assessment, the department shall issue to the taxpayer a notice explaining the

audit findings. No later than 30 days after the issuance of the notice, the taxpayer may request in writing an exit conference at a mutually agreeable date and time with the department's audit staff to discuss the audit findings. The exit conference must be conducted no later than 30 days after a request for the conference, unless the taxpayer and the department enter into an agreement to extend the audit tolling period pursuant to s. 213.23. The taxpayer shall be given an opportunity at or before the exit conference to provide additional information and documents to the department to rebut the audit findings. Upon the mutual written agreement between the department and the taxpayer to extend the audit tolling period pursuant to s. 213.23, the exit conference may be continued to allow the taxpayer additional time to provide information and documents to the department. The department shall review any information provided by the taxpayer and, if the department revises the audit findings, a copy of the revised audit findings must be provided to the taxpayer. Such revision of the audit findings does not provide a right to any additional conference.

(b) If an exit conference is timely requested in writing, the limitations in s. 95.091(3) are tolled an additional 60 days. If the department fails to offer a taxpayer the opportunity to hold an exit conference despite a timely written request, the limitations period in s. 95.091(3) may not be tolled for the additional 60 days. If the assessment is issued outside of the limitations period, the assessment must be reduced by the amount of those taxes, penalties, and interest for reporting periods outside of the limitations period, as modified by any other tolling or extension provisions.

(c) If a request for an exit conference is not timely made, the right to a conference is waived. A taxpayer may also affirmatively waive its right to an exit conference. Failure to hold an exit conference does not preclude the department from issuing an assessment.

(d) The department may adopt rules to implement this subsection.

(3) The department may correct by credit or refund any overpayment of tax, penalty, or interest revealed by an audit and shall make assessment of any deficiency in tax, penalty, or interest determined to be due.

(4) Notwithstanding ~~the provisions of~~ s. 215.26, the department shall offset the overpayment of any tax during an audit period against a deficiency of any tax, penalty, or interest determined to be due during the same audit period.

(5) After the application of subsection (4), if the department's audit finds that the tax paid is more than the correct amount, the department must refund the overpayment that is within the applicable period provided by s. 215.26. Such action by the department does not prevent a taxpayer from challenging the amount of the refund pursuant to chapters 72 and 120 or applying for a refund of additional tax within the applicable period.

Section 16. Section 213.345, Florida Statutes, is amended to read:

213.345 Tolling of periods during an audit.—The limitations in s. 95.091(3) and the period for filing a claim for refund as required by s. 215.26(2) are ~~shall be~~ tolled for a period of 1 year if the Department of Revenue has, on or after July 1, 1999,

issued a notice of intent to conduct an audit or investigation of the taxpayer's account within the applicable period of time. The 1-year period is tolled upon receipt of written objections to the subpoena and for the entire pendency of any action that seeks an order to enforce compliance with or to challenge any subpoena issued by the department compelling the attendance and testimony of witnesses and the production of books, records, written materials, and electronically recorded information. The department must commence an audit within 120 days after it issues a notice of intent to conduct an audit, unless the taxpayer requests a delay. If the taxpayer does not request a delay and the department does not begin the audit within 120 days after issuing the notice, the tolling period terminates ~~shall terminate~~ unless the taxpayer and the department enter into an agreement to extend the period pursuant to s. 213.23. If the department issues a notice explaining its audit findings under s. 213.34(2)(a) based on an estimate because the taxpayer has failed or refuses to provide records, the audit will be deemed to have commenced for purposes of this section. In the event the department issues an assessment beyond the tolling period, the assessment will be considered late and the assessment shall be reduced by the amount of those taxes, penalties, and interest for reporting periods outside of the limitations period, as modified by any other tolling or extension provisions.

Section 17. Subsections (1), (3), and (6) of section 213.67, Florida Statutes, are amended to read:

213.67 Garnishment.—

(1) If a person is delinquent in the payment of any taxes,

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penalties, ~~and~~ interest, additional daily accrued interest, costs, and fees owed to the department, the executive director or his or her designee may give notice of the amount of such delinquency by registered mail, by personal service, or by electronic means, including, but not limited to, facsimile transmissions, electronic data interchange, or use of the Internet, to all persons having in their possession or under their control any credits or personal property, exclusive of wages, belonging to the delinquent taxpayer, or owing any debts to such delinquent taxpayer at the time of receipt by them of such notice. Thereafter, any person ~~who has been~~ notified may not transfer or make any other disposition of such credits, other personal property, or debts until the executive director or his or her designee consents to a transfer or disposition or until 60 days after the receipt of such notice. However, the credits, other personal property, or debts that exceed the delinquent amount stipulated in the notice are not subject to this section, wherever held, if the taxpayer does not have a prior history of tax delinquencies. If during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld under this section, he or she is liable to the state for any indebtedness owed to the department by the person with respect to whose obligation the notice was given to the extent of the value of the property or the amount of the debts thus transferred or paid if, solely by reason of such transfer or disposition, the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given. If the delinquent taxpayer contests the intended levy in

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circuit court or under chapter 120, the notice under this section remains effective until that final resolution of the contest. Any financial institution receiving such notice maintains ~~will maintain~~ a right of setoff for any transaction involving a debit card occurring on or before the date of receipt of such notice.

(3) During the last 30 days of the 60-day period set forth in subsection (1), the executive director or his or her designee may levy upon such credits, other personal property, or debts. The levy must be accomplished by delivery of a notice of levy by registered mail, by personal service, or by electronic means, including, but not limited to, facsimile transmission or electronic data exchange. Upon receipt of the notice of levy, ~~which~~ the person possessing the credits, other personal property, or debts shall transfer them to the department or pay to the department the amount owed to the delinquent taxpayer.

(6)(a) Levy may be made under subsection (3) upon credits, other personal property, or debt of any person with respect to any unpaid tax, penalties, ~~and~~ interest, additional daily accrued interest, costs, and fees only after the executive director or his or her designee has notified such person in writing of the intention to make such levy.

(b) No less than 30 days before the day of the levy, the notice of intent to levy required under paragraph (a) must ~~shall~~ be given in person or sent by certified or registered mail to the person's last known address.

(c) The notice required in paragraph (a) must include a brief statement that sets forth in simple and nontechnical terms:

1. The provisions of this section relating to levy and sale of property;

2. The procedures applicable to the levy under this section;

3. The administrative and judicial appeals available to the taxpayer with respect to such levy and sale, and the procedures relating to such appeals; and

4. Any ~~The~~ alternatives~~, if any,~~ available to taxpayers which could prevent levy on the property.

Section 18. Section 220.42, Florida Statutes, is amended to read:

220.42 Methods of accounting.—

(1) For purposes of this code, a taxpayer's method of accounting must ~~shall~~ be the same as such taxpayer's method of accounting for federal income tax purposes~~, except as provided in subsection (3)~~. If no method of accounting has been regularly used by a taxpayer, net income for purposes of this code must ~~shall~~ be computed by the ~~such~~ method that ~~as in the opinion of~~ the department determines most fairly reflects income.

(2) If a taxpayer's method of accounting is changed for federal income tax purposes, the taxpayer's method of accounting for purposes of this code must ~~shall~~ be similarly changed.

~~(3) Any taxpayer which has elected for federal income tax purposes to report any portion of its income on the completed contract method of accounting under Treasury Regulation 1.451-3(b)(2) may elect to return the income so reported on the percentage of completion method of accounting under Treasury Regulation 1.451-3(b)(1), provided the taxpayer regularly maintains its books of account and reports to its shareholders~~

~~on the percentage of completion method. The election provided by this subsection shall be allowed only if it is made, in such manner as the department may prescribe, not later than the due date, including any extensions thereof, for filing a return for the taxpayer's first taxable year under this code in which a portion of its income is returned on the completed contract method of accounting for federal tax purposes. An election made pursuant to this subsection shall apply to all subsequent taxable years of the taxpayers unless the department consents in writing to its revocation.~~

Section 19. Subsection (4) is added to section 220.735, Florida Statutes, to read:

220.735 Production of witnesses and records.—

(4) The failure of a taxpayer to provide documents available to, or required to be kept by, the taxpayer and requested by a subpoena issued under this section creates a rebuttable presumption that the resulting proposed final agency action by the department, as to the requested documents, is correct and that the requested documents not produced by the taxpayer would be adverse to the taxpayer's position as to the proposed final agency action. If a taxpayer fails to provide documents requested by a subpoena issued under this section, the department may determine the amount of tax due according to its best judgement and may issue a notice of deficiency to the taxpayer, setting forth the amount of tax, interest, and any penalties proposed to be assessed. The department shall inform the taxpayer of the reason for the estimate and the information and methodology used to derive the estimate. Such assessment shall be prima facie correct, and the burden to show the

contrary rests upon the taxpayer.

Section 20. Paragraph (e) of subsection (3) of section 443.131, Florida Statutes, is amended to read:

443.131 Contributions.—

(3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT EXPERIENCE.—

(e) *Assignment of variations from the standard rate.*—

1. As used in this paragraph, the terms "total benefit payments," "benefits paid to an individual," and "benefits charged to the employment record of an employer" mean the amount of benefits paid to individuals multiplied by:

a. For benefits paid before ~~prior to~~ July 1, 2007, 1.

b. For benefits paid during the period beginning on July 1, 2007, and ending March 31, 2011, 0.90.

c. For benefits paid after March 31, 2011, 1.

d. For benefits paid during the period beginning April 1, 2020, and ending December 31, 2020, 0.

e. For benefits paid during the period beginning January 1, 2021, and ending June 30, 2021, 1, except as otherwise adjusted in accordance with paragraph (f).

2. For the calculation of contribution rates effective January 1, 2012, and thereafter:

a. The tax collection service provider shall assign a variation from the standard rate of contributions for each calendar year to each eligible employer. In determining the contribution rate, varying from the standard rate to be assigned each employer, adjustment factors computed under sub-sub-subparagraphs (I)-(IV) are added to the benefit ratio. This addition shall be accomplished in two steps by adding a variable

adjustment factor and a final adjustment factor. The sum of these adjustment factors computed under sub-sub-subparagraphs (I)-(IV) shall first be algebraically summed. The sum of these adjustment factors shall next be divided by a gross benefit ratio determined as follows: Total benefit payments for the 3-year period described in subparagraph (b)3. are charged to employers eligible for a variation from the standard rate, minus excess payments for the same period, divided by taxable payroll entering into the computation of individual benefit ratios for the calendar year for which the contribution rate is being computed. The ratio of the sum of the adjustment factors computed under sub-sub-subparagraphs (I)-(IV) to the gross benefit ratio is multiplied by each individual benefit ratio that is less than the maximum contribution rate to obtain variable adjustment factors; except that if the sum of an employer's individual benefit ratio and variable adjustment factor exceeds the maximum contribution rate, the variable adjustment factor is reduced in order for the sum to equal the maximum contribution rate. The variable adjustment factor for each of these employers is multiplied by his or her taxable payroll entering into the computation of his or her benefit ratio. The sum of these products is divided by the taxable payroll of the employers who entered into the computation of their benefit ratios. The resulting ratio is subtracted from the sum of the adjustment factors computed under sub-sub-subparagraphs (I)-(IV) to obtain the final adjustment factor. The variable adjustment factors and the final adjustment factor must be computed to five decimal places and rounded to the fourth decimal place. This final adjustment factor is added to

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the variable adjustment factor and benefit ratio of each employer to obtain each employer's contribution rate. An employer's contribution rate may not, however, be rounded to less than 0.1 percent. In determining the contribution rate, varying from the standard rate to be assigned, the computation shall exclude any benefit that is excluded by the multipliers under subparagraph (b)2. and subparagraph 1. for rates effective January 1, 2021, through December 31, 2025, notwithstanding the repeal of subparagraph 5. as provided in chapter 2021-2, Laws of Florida. The computation of the contribution rate, varying from the standard rate to be assigned, shall also exclude any benefit paid as a result of a governmental order related to COVID-19 to close or reduce capacity of a business. In addition, the contribution rate for the 2021 and 2022 calendar years shall be calculated without the application of the positive adjustment factor in sub-sub-subparagraph (III).

(I) An adjustment factor for noncharge benefits is computed to the fifth decimal place and rounded to the fourth decimal place by dividing the amount of noncharge benefits during the 3-year period described in subparagraph (b)3. by the taxable payroll of employers eligible for a variation from the standard rate who have a benefit ratio for the current year which is less than the maximum contribution rate. For purposes of computing this adjustment factor, the taxable payroll of these employers is the taxable payrolls for the 3 years ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of the same calendar year. As used in this sub-sub-subparagraph, the term "noncharge benefits" means benefits paid to an individual, as adjusted pursuant to

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subparagraph (b)2. and subparagraph 1., from the Unemployment Compensation Trust Fund which were not charged to the employment record of any employer, but excluding any benefit paid as a result of a governmental order related to COVID-19 to close or reduce capacity of a business.

(II) An adjustment factor for excess payments is computed to the fifth decimal place, and rounded to the fourth decimal place by dividing the total excess payments during the 3-year period described in subparagraph (b)3. by the taxable payroll of employers eligible for a variation from the standard rate who have a benefit ratio for the current year which is less than the maximum contribution rate. For purposes of computing this adjustment factor, the taxable payroll of these employers is the same figure used to compute the adjustment factor for noncharge benefits under sub-sub-subparagraph (I). As used in this sub-subparagraph, the term "excess payments" means the amount of benefits charged to the employment record of an employer, as adjusted pursuant to subparagraph (b)2. and subparagraph 1., during the 3-year period described in subparagraph (b)3., but excluding any benefit paid as a result of a governmental order related to COVID-19 to close or reduce capacity of a business, less the product of the maximum contribution rate and the employer's taxable payroll for the 3 years ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of the same calendar year. As used in this sub-sub-subparagraph, the term "total excess payments" means the sum of the individual employer excess payments for those employers that were eligible for assignment of a contribution rate different from the standard rate.

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(III) With respect to computing a positive adjustment factor:

(A) Beginning January 1, 2012, if the balance of the Unemployment Compensation Trust Fund on September 30 of the calendar year immediately preceding the calendar year for which the contribution rate is being computed is less than 4 percent of the taxable payrolls for the year ending June 30 as reported to the tax collection service provider by September 30 of that calendar year, a positive adjustment factor shall be computed. The positive adjustment factor is computed annually to the fifth decimal place and rounded to the fourth decimal place by dividing the sum of the total taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year into a sum equal to one-fifth of the difference between the balance of the fund as of September 30 of that calendar year and the sum of 5 percent of the total taxable payrolls for that year. The positive adjustment factor remains in effect for subsequent years until the balance of the Unemployment Compensation Trust Fund as of September 30 of the year immediately preceding the effective date of the contribution rate equals or exceeds 4 percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year.

(B) Beginning January 1, 2018, and for each year thereafter, the positive adjustment shall be computed by dividing the sum of the total taxable payrolls for the year ending June 30 of the current calendar year as reported to the

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tax collection service provider by September 30 of that calendar year into a sum equal to one-fourth of the difference between the balance of the fund as of September 30 of that calendar year and the sum of 5 percent of the total taxable payrolls for that year. The positive adjustment factor remains in effect for subsequent years until the balance of the Unemployment Compensation Trust Fund as of September 30 of the year immediately preceding the effective date of the contribution rate equals or exceeds 4 percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year.

(IV) If, beginning January 1, 2015, and each year thereafter, the balance of the Unemployment Compensation Trust Fund as of September 30 of the year immediately preceding the calendar year for which the contribution rate is being computed exceeds 5 percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year, a negative adjustment factor must be computed. The negative adjustment factor shall be computed annually beginning on January 1, 2015, and each year thereafter, to the fifth decimal place and rounded to the fourth decimal place by dividing the sum of the total taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of the calendar year into a sum equal to one-fourth of the difference between the balance of the fund as of September 30 of the current calendar year and 5 percent of the total taxable payrolls of

that year. The negative adjustment factor remains in effect for subsequent years until the balance of the Unemployment Compensation Trust Fund as of September 30 of the year immediately preceding the effective date of the contribution rate is less than 5 percent, but more than 4 percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year. The negative adjustment authorized by this section is suspended in any calendar year in which repayment of the principal amount of an advance received from the federal Unemployment Compensation Trust Fund under 42 U.S.C. s. 1321 is due to the Federal Government.

(V) The maximum contribution rate that may be assigned to an employer is 5.4 percent, except employers participating in an approved short-time compensation plan may be assigned a maximum contribution rate that is 1 percent greater than the maximum contribution rate for other employers in any calendar year in which short-time compensation benefits are charged to the employer's employment record.

(VI) As used in this subsection, "taxable payroll" shall be determined by excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year in excess of the first $7,000. Beginning January 1, 2012, "taxable payroll" shall be determined by excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year as described in s. 443.1217(2). For the purposes of the employer rate calculation that will take effect in January 1, 2012, and in January 1, 2013, the tax collection service provider shall use the data

available for taxable payroll from 2009 based on excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year in excess of the first $7,000, and from 2010 and 2011, the data available for taxable payroll based on excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year in excess of the first $8,500.

b. If the transfer of an employer's employment record to an employing unit under paragraph (g) which, before the transfer, was an employer, the tax collection service provider shall recompute a benefit ratio for the successor employer based on the combined employment records and reassign an appropriate contribution rate to the successor employer effective on the first day of the calendar quarter immediately after the effective date of the transfer.

3. The tax collection service provider shall reissue rates for the 2021 calendar year. However, an employer shall continue to timely file its employer's quarterly reports and pay the contributions due in a timely manner in accordance with the rules of the Department of Economic Opportunity. The Department of Revenue shall post the revised rates on its website to enable employers to securely review the revised rates. For contributions for the first quarter of the 2021 calendar year, if any employer remits to the tax collection service provider an amount in excess of the amount that would be due as calculated pursuant to this paragraph, the tax collection service provider shall refund the excess amount from the amount erroneously collected. Notwithstanding s. 443.141(6), refunds issued through August 31, 2021, for first quarter 2021 contributions must be

paid from the General Revenue Fund.

4. The tax collection service provider shall calculate and assign contribution rates effective January 1, 2022, through December 31, 2022, excluding any benefit charge that is excluded by the multipliers under subparagraph (b)2. and subparagraph 1.; without the application of the positive adjustment factor in sub-sub-subparagraph 2.a.(III); and without the inclusion of any benefit charge directly related to COVID-19 as a result of a governmental order to close or reduce capacity of a business, as determined by the Department of Economic Opportunity, for each employer ~~who is~~ eligible for a variation from the standard rate pursuant to paragraph (d). The Department of Economic Opportunity shall provide the tax collection service provider with all necessary benefit charge information by August 1, 2021, including specific information for adjustments related to COVID-19 charges resulting from a governmental order to close or reduce capacity of a business, to enable the tax collection service provider to calculate and issue tax rates effective January 1, 2022. The tax collection service provider shall calculate and post rates for the 2022 calendar year by March 1, 2022.

5. Subject to subparagraph 6., the tax collection service provider shall calculate and assign contribution rates effective January 1, 2023, through December 31, 2025, excluding any benefit charge that is excluded by the multipliers under subparagraph (b)2. and subparagraph 1.; without the application of the positive adjustment factor in sub-sub-subparagraph 2.a.(III); and without the inclusion of any benefit charge directly related to COVID-19 as a result of a governmental order

to close or reduce capacity of a business, as determined by the Department of Economic Opportunity, for each employer ~~who is~~ eligible for a variation from the standard rate pursuant to paragraph (d). The Department of Economic Opportunity shall provide the tax collection service provider with all necessary benefit charge information by August 1 of each year, including specific information for adjustments related to COVID-19 charges resulting from a governmental order to close or reduce capacity of a business, to enable the tax collection service provider to calculate and issue tax rates effective the following January.

6. If the balance of the Unemployment Compensation Trust Fund on June 30 of any year exceeds $4,071,519,600, subparagraph 5. is repealed for rates effective the following years. The Office of Economic and Demographic Research shall advise the tax collection service provider of the balance of the trust fund on June 30 by August 1 of that year. After the repeal of subparagraph 5. and notwithstanding the dates specified in that subparagraph, the tax collection service provider shall calculate and assign contribution rates for each subsequent calendar year as otherwise provided in this section.

Section 21. Paragraph (a) of subsection (9) of section 443.171, Florida Statutes, is amended to read:

443.171 Department of Economic Opportunity and commission; powers and duties; records and reports; proceedings; state-federal cooperation.—

(9) STATE-FEDERAL COOPERATION.—

(a)1. In the administration of this chapter, the Department of Economic Opportunity and its tax collection service provider shall cooperate with the United States Department of Labor to

the fullest extent consistent with this chapter and shall take those actions, through the adoption of appropriate rules, administrative methods, and standards, necessary to secure for this state all advantages available under the provisions of federal law relating to reemployment assistance.

2. In the administration of the provisions in s. 443.1115, which are enacted to conform with the Federal-State Extended Unemployment Compensation Act of 1970, the department shall take those actions necessary to ensure that those provisions are interpreted and applied to meet the requirements of the federal act as interpreted by the United States Department of Labor and to secure for this state the full reimbursement of the federal share of extended benefits paid under this chapter which is reimbursable under the federal act.

3. The department and its tax collection service provider shall comply with the regulations of the United States Department of Labor relating to the receipt or expenditure by this state of funds granted under federal law; shall submit the reports in the form and containing the information the United States Department of Labor requires; and shall comply with directions of the United States Department of Labor necessary to assure the correctness and verification of these reports.

4. The department and its tax collection service provider shall comply with the requirements of the federal Treasury Offset Program as it pertains to the recovery of unemployment compensation debts as required by the United States Department of Labor pursuant to 26 U.S.C. s. 6402. The department or the tax collection service provider may adopt rules to implement this subparagraph.

Section 22. This act shall take effect July 1, 2022.

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The Florida Senate

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02/28/22
Meeting Date

Appropriations
Committee

1382
Bill Number or Topic

604478
Amendment Barcode (if applicable)

Name Lisa Vickers Phone 717-2153

Address 2450 Shumard Oak Blvd Email lisa.vickers@floridarevenue.com
Street

Tlh FL 32399
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: FL Dept. of Revenue

☐ 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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604478
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: FL Dept. of Revenue

☐ 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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02/28/22
Meeting Date

Appropriations
Committee

1382
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jim Zingale

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

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FL Dept. of Revenue

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APPEARANCE RECORD

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2/28/22
Meeting Date

1382
Bill Number or Topic

Appropriations
Committee

Amendment Barcode (if applicable)

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City State Zip

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PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: NFIB

☐ 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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Feb. 28, 2022
Meeting Date

Appropriations
Committee

CS/SB 1382
Bill Number or Topic

Amendment Barcode (if applicable)

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City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

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 Appropriations

BILL:	PCS/CS/SB 1426 (66660)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Environment and Natural Resources Committee; and Senator Burgess
SUBJECT:	Environmental Management
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carroll	Rogers	EN	**Fav/CS**
2.	Reagan	Betta	AEG	**Recommend: Fav/CS**
3.	Reagan	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1426 creates the concept of water quality enhancement areas (WQEAs). A WQEA is a natural system that is constructed, operated, managed, and maintained pursuant to a permit to provide offsite, compensatory, regional treatment within an identified enhancement service area and enhancement credits.

The bill provides that construction, operation, management, and maintenance of a WQEA must be approved through the environmental resource permitting (ERP) process. The bill sets out requirements for a water quality credit program based on the development of WQEAs and authorizes the Department of Environmental Protection (DEP) to develop rules to implement the program. Water quality enhancement credits may be sold only to governmental entities.

The bill makes clarifications regarding incentives for the use of graywater technologies.

According to the DEP, the department would incur costs from operating the WQEA program, as the program would need eight additional staff members and associated travel. The total financial impact for these positions including salaries, benefits, expenses, and travel costs would be approximately $878,275 annually.

II. Present Situation:

Water Quality and Nutrients

Phosphorous and nitrogen are naturally present in water and are essential nutrients for the healthy growth of plant and animal life.[1] The correct balance of both nutrients is necessary for a healthy ecosystem; however, excessive amounts can cause significant water quality problems.

Phosphorous and nitrogen are derived from natural and human-made sources. Human-made sources include sewage disposal systems (wastewater treatment facilities and septic systems), overflows of storm and sanitary sewers (untreated sewage), agricultural production and irrigation practices, and stormwater runoff.[2]

Excessive nutrient loads may result in harmful algal blooms, nuisance aquatic weeds, and the alteration of the natural community of plants and animals. Dense, harmful algal blooms can also cause human health problems, fish kills, problems for water treatment plants, and impairment of the aesthetics and taste of waters. Growth of nuisance aquatic weeds tends to increase in nutrient-enriched waters, which can impact recreational activities.[3]

Total Maximum Daily Loads

A total maximum daily load (TMDL), which must be adopted by rule, is a scientific determination of the maximum amount of a given pollutant that can be absorbed by a waterbody and still meet water quality standards.[4] Waterbodies or sections of waterbodies that do not meet the established water quality standards are deemed impaired. Pursuant to the federal Clean Water Act, the Department of Environmental Protection (DEP) must establish a TMDL for impaired waterbodies.[5] A TMDL for an impaired waterbody is the sum of the individual waste load allocations for point sources and the load allocations for nonpoint sources and natural background.[6] Point sources are discernible, confined, and discrete conveyances including pipes, ditches, and tunnels. Nonpoint sources are unconfined sources that include runoff from agricultural lands or residential areas.[7]

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[1] U.S. Environmental Protection Agency (EPA), *Sources and Solutions*, https://www.epa.gov/nutrientpollution/sources-and-solutions (last visited Jan. 26, 2022).
[2] *Id.*
[3] EPA, *The Issue*, https://www.epa.gov/nutrientpollution/problem (last visited Jan. 26, 2022).
[4] Department of Environmental Protection (DEP), *Total Maximum Daily Loads Program*, https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program (last visited Jan. 26, 2022).
[5] Section 403.067(1), F.S.
[6] Section 403.031(21), F.S.
[7] Fla. Admin. Code R. 62-620.200(37). "Point source" is defined as "any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged." Nonpoint sources of pollution are sources of pollution that are not point sources. Nonpoint sources can include runoff from agricultural lands or residential areas; oil, grease and toxic materials from urban runoff; and sediment from improperly managed construction sites.

Basin Management Action Plans and Best Management Practices

The DEP is the lead agency in coordinating the development and implementation of TMDLs.[8] Basin management action plans (BMAPs) are one of the primary mechanisms DEP uses to achieve TMDLs. BMAPs are plans that address the entire pollution load, including point and nonpoint discharges,[9] for a watershed or a specific waterbody. BMAPs generally include:

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Best management practices (BMPs) and non-regulatory and incentive-based programs, including cost-sharing, waste minimization, pollution prevention, agreements, and public education;
- Public works projects, including capital facilities; and
- Land acquisition.[10]

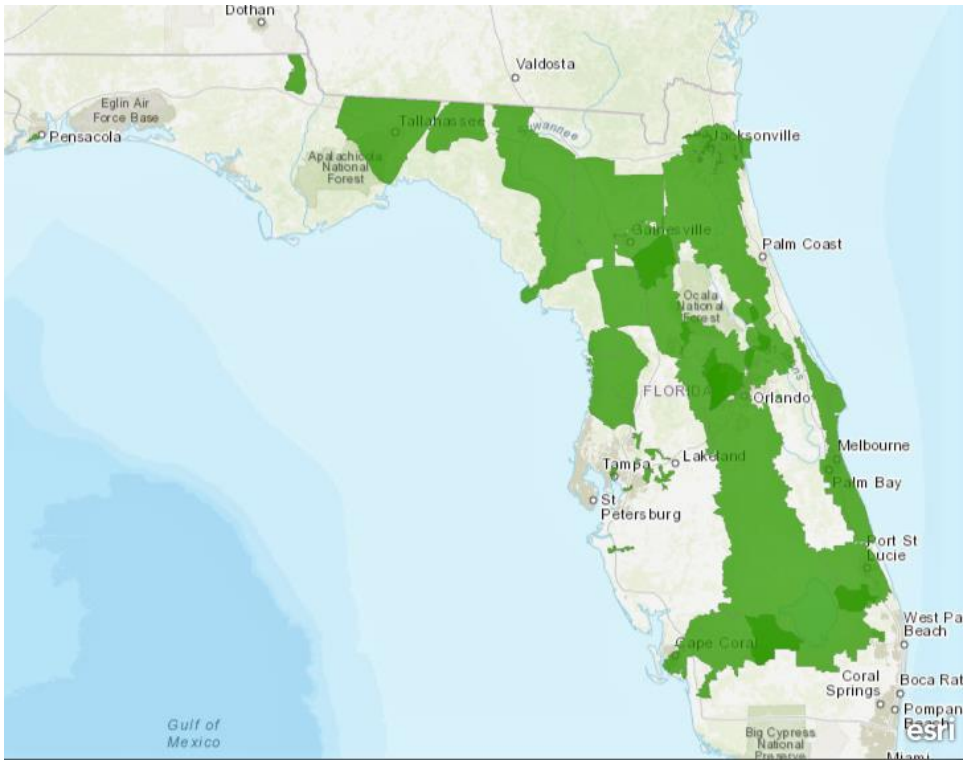
A BMAP equitably allocates pollutant reductions to individual basins, to all basins as a whole, or to each identified point source or category of nonpoint sources.[11] Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations. The BMAP development process provides an opportunity for local stakeholders, local government, community leaders, and the public to determine and share water quality cleanup responsibilities collectively.[12]

BMAPs must include milestones for implementation and water quality improvement.[13] They must also include an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones must be conducted every five years, and revisions to the BMAP must be made as appropriate.[14]

Producers of nonpoint source pollution included in a BMAP must comply with the established pollutant reductions by either implementing the appropriate BMPs or by conducting water quality monitoring.[15] A nonpoint source discharger may be subject to enforcement action by the DEP or a water management district (WMD) based on a failure to implement these requirements.[16] BMPs are designed to reduce the amount of nutrients, sediments, and pesticides

[8] Section 403.061, F.S. DEP has the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. Furthermore, s. 403.061(21), F.S., allows DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.
[9] Fla. Admin. Code R. 62-620.200(37). "Point source" is defined as "any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged." Nonpoint sources of pollution are sources of pollution that are not point sources.
[10] Section 403.067(7), F.S.
[11] *Id*.
[12] DEP, *Basin Management Action Plans (BMAPs)*, https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps (last visited Dec. 4, 2019).
[13] Section 403.067(7)(a)6., F.S.
[14] *Id.*
[15] Section 403.067(7)(b)2.g., F.S. For example, BMPs for agriculture include activities such as managing irrigation water to minimize losses, limiting the use of fertilizers, and waste management.
[16] Section 403.067(7)(b)2.h., F.S.

that enter the water system and to help reduce water use. BMPs are developed for agricultural operations as well as for other activities, such as nutrient management on golf courses, forestry operations, and stormwater management.[17] The graphic below shows the state's BMAPs.[18]



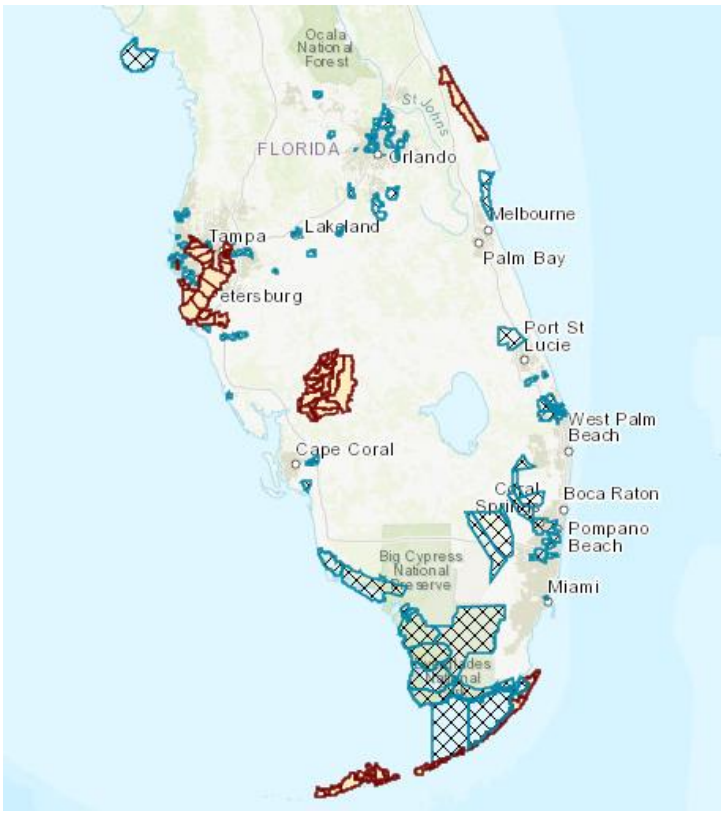
Reasonable Assurance Plans

The U.S. Environmental Protection Agency allows states to place certain impaired waterbodies into Category 4b for Clean Water Act section 303(d) reporting purposes, meaning that the establishment of a TMDL is not required for an impaired waterbody if other required control measures are expected to result in the attainment of water quality standards in a reasonable period of time.[19]

A Reasonable Assurance Plan (RAP) is a control measure that the DEP may implement for Category 4b impaired waterbodies.[20] The DEP first determines if a waterbody is impaired or may be reasonably expected to become impaired within the next five years.[21] If a waterbody fits this criteria, the DEP evaluates whether existing or proposed technology-based effluent limitations and other pollution control programs are sufficient to result in the attainment of water quality

[17] DEP, *NPDES Stormwater Program*, https://floridadep.gov/Water/Stormwater (last visited Jan. 26, 2022).
[18] DEP, *Impaired Waters, TMDLs, and Basin Management Action Plans Interactive Map*, https://floridadep.gov/dear/water-quality-restoration/content/impaired-waters-tmdls-and-basin-management-action-plans (last visited Jan. 26, 2022).
[19] *Id.*; EPA, *EPA Integrated Reporting (IR) Categories and How ATTAINS Calculates Them*, 1 (Aug. 31, 2018) *available at* https://www.epa.gov/sites/default/files/2018-09/documents/attains_calculations_of_epa_ir_categories_2018-08-31.pdf (last visited Jan. 27, 2022).
[20] DEP, *Alternative Restoration Plans*, https://floridadep.gov/DEAR/Alternative-Restoration-Plans (last visited Jan. 27, 2022).
[21] Fla. Admin. Code R. 62-303.600.

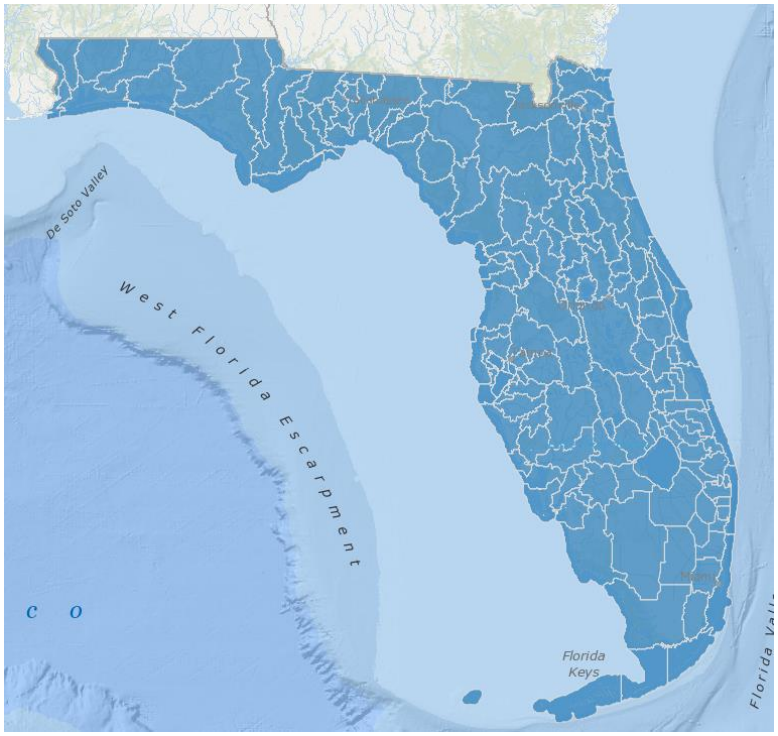
standards. If the waterbody is expected to attain water quality standards in the future and to make reasonable progress towards attainment of those standards in a certain timeframe, the waterbody will not require a TMDL. The DEP's decision must be based on a plan that provides reasonable assurance that proposed pollution control mechanisms and expected water quality improvements in the waterbody will attain water quality standards.[22] The graphic on the right shows the RAP boundaries in the outlined areas without a grid.[23]



Planning Units

A planning unit is either an individual large tributary basin or a group of smaller adjacent tributary basins with similar characteristics.[24] Planning units help organize information and management strategies around prominent watershed characteristics, and they provide a more detailed geographic basis for identifying and assessing water quality improvement activities.[25] The graphic on the next page shows the state's planning units.[26]

[22] *Id.*
[23] DEP, *Restoration Plans*, https://fdep.maps.arcgis.com/apps/View/index.html?appid=5a34b0e9d46447559b52d8267083596f (last visited Jan. 28, 2022).
[24] DEP, *TMDL Planning Units*, https://geodata.dep.state.fl.us/datasets/c97e066f49044131a13a79f5beeeaf40_6/about (last visited Jan. 27, 2022).
[25] *Id.*
[26] DEP, *TMDL Planning Units, Geospatial Open Data*, https://geodata.dep.state.fl.us/datasets/FDEP::total-maximum-daily-load-tmdl-planning-units/explore?location=27.664924%2C-83.725800%2C7.00 (last visited Jan. 28, 2022).



Stormwater Management

Stormwater is the flow of water resulting from, and immediately following, a rainfall event.[27] When stormwater falls on pavement, buildings, and other impermeable surfaces, the runoff flows quickly and can pick up sediment, trash, chemicals, and other pollutants.[28] Stormwater is a major source of water pollution in Florida.[29]

The regulatory programs that address reductions in water quality caused by stormwater are the federal National Pollution Discharge Elimination System (NPDES), which regulates discharges of pollutants into waters of the United States,[30] and the state Environmental Resource Permitting (ERP) Program, which regulates activities involving the alteration of surface water flows.[31]

[27] DEP and Water Management Districts, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)*, 2-10 (June 1, 2018), *available at* https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Appliicant_Hanbook_I_-_Combined.pd_0.pdf.
[28] DEP, *Stormwater Management*, 1 (2016), *available at* https://floridadep.gov/sites/default/files/stormwater-management_0.pdf. When rain falls on fields, forests, and other areas with naturally permeable surfaces the water not absorbed by plants filters through the soil and replenishes Florida's groundwater supply.
[29] DEP, *Stormwater Support*, https://floridadep.gov/water/engineering-hydrology-geology/content/stormwater-support (last visited Oct. 6, 2021); DEP, *Nonpoint Source Program Update*, 10 (2015), *available at* https://floridadep.gov/sites/default/files/NPS-ManagementPlan2015.pdf.
[30] National Pollutant Discharge Elimination System (NPDES), 33 U.S.C. s. 1342 (2019); 40 C.F.R. pt. 122; Under the Clean Water Act, the U.S. Environmental Protection Agency authorizes the NPEDS permit program to state, tribal, and territorial governments, enabling them to perform many of the permitting, administrative, and enforcement aspects of the program. EPA, *About NPDES*, https://www.epa.gov/npdes/about-npdes#overview (last visited Jan. 27, 2022).
[31] Chapter 373, pt. IV, F.S.; Fla. Admin. Code Ch. 62-330.

The NPDES regulates stormwater pollution from certain municipal storm sewer systems and runoff from certain construction and industrial activities.[32] The state's ERP program regulates activities that create stormwater runoff, as well as dredging and filling in wetlands and other surface waters.[33] ERPs aim to prevent flooding, protect wetlands and other surface waters, and protect water quality from stormwater pollution.[34] The DEP, the WMDs, and local governments implement the ERP program.[35]

The DEP and the WMDs may require ERPs and impose reasonable conditions:

- To ensure that construction or alteration of stormwater management systems and related structures is consistent with applicable law and not harmful to water resources;[36] and
- For the maintenance or operation of such structures.[37]

The DEP's stormwater rules are technology-based effluent limitations, rather than water quality-based effluent limitations.[38] This means that stormwater rules rely on design criteria for BMPs to achieve a performance standard for pollution reduction, rather than specifying the amount of a specific pollutant that may be discharged to a waterbody and still ensure that the waterbody attains water quality standards.[39] The rules contain minimum stormwater treatment performance standards, which require design and performance criteria for new stormwater management systems to achieve at least 80 percent reduction of the average annual load of pollutants that would cause or contribute to violations of state water quality standards.[40]

The DEP and the WMDs require applicants to provide reasonable assurance that state water quality standards will not be violated.[41] If a stormwater management system is designed in accordance with the stormwater treatment requirements and criteria adopted by the DEP or the WMDs, then the system design is presumed not to cause or contribute to violations of applicable state water quality standards.[42] If a stormwater management system is constructed, operated, and maintained for stormwater treatment in accordance with a valid permit or exemption, then the

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[32] Stormwater can be either a point source or a nonpoint source of pollution. EPA, *Monitoring and Evaluating Nonpoint Source Watershed Projects*, 1-1, *available at* https://www.epa.gov/sites/production/files/2016-02/documents/chapter_1_draft_aug_2014.pdf; DEP, *Nonpoint Source Program Update*, 9 (2015), *available at* https://floridadep.gov/sites/default/files/NPS-ManagementPlan2015.pdf; *See generally* EPA, *NPDES Stormwater Program*, https://www.epa.gov/npdes/npdes-stormwater-program (last visited Jan. 26, 2022).

[33] DEP, *DEP 101: Environmental Resource Permitting*, https://floridadep.gov/comm/press-office/content/dep-101-environmental-resource-permitting (last visited Jan. 26, 2022).

[34] South Florida Water Management District, *Environmental Resource Permits*, https://www.sfwmd.gov/doing-business-with-us/permits/environmental-resource-permits (last visited Jan. 26, 2022).

[35] Fla. Admin. Code R. 62-330.010(3).

[36] Section 373.413, F.S.; *see* s. 403.814(12), F.S.

[37] Section 373.416, F.S.

[38] DEP, *ERP Stormwater*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/erp-stormwater (last visited Jan. 26, 2022).

[39] See generally, EPA, *National Pollutant Discharge Elimination System (NPDES)*, www.epa.gov/npdes/npdes-permit-limits (last visited Jan. 26, 2022).

[40] Fla. Admin. Code R. 62-40.432(2).

[41] Section 373.414(1), F.S.; *see* s. 373.403(11), F.S.; *see* Fla. Admin. Code Ch. 62-4, 62-302, 62-520, and 62-550.

[42] Section 373.4131(3)(b), F.S. Fla. Admin. Code R. 62-40.432(2); *see also* DEP, *ERP Stormwater*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/erp-stormwater (last visited Jan. 27, 2022) (stating that a key component of the stormwater rule is a "rebuttable presumption that discharges from a stormwater management system designed in accordance with the BMP design criteria will not cause harm to water resources").

stormwater discharged from the system is presumed not to cause or contribute to violations of applicable state water quality standards.[43] If an applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the DEP or a WMD must consider mitigation measures that cause a net improvement of the water quality in the waterbody that does not meet the standards.[44]

2020 Stormwater Rulemaking

In 2020, the Florida Legislature passed CS/SB 712, the Clean Waterways Act, to address known sources of nutrient pollution in waterways and to strengthen regulatory requirements.[45] The Clean Waterways Act required the DEP and the WMDs to update stormwater regulations to reflect the latest scientific information. In response, the DEP created the Clean Waterways Act Stormwater Rulemaking Technical Advisory Committee (TAC). The TAC's goal is to develop and provide consensus stormwater rulemaking recommendations for the DEP and the WMDs.[46] The TAC's initial discussion topics were as follows:

- Options for identifying stormwater design criteria and BMPs that are effective for increasing nutrient removal from stormwater runoff;
- Measures for consistent application of the net improvement performance standard to ensure significant reductions of any pollutant loadings to a waterbody thought to be impaired by stormwater runoff; and
- Changes to improve existing stormwater operation regulations to ensure water resources are protected by the rulemaking directed under the Clean Waterways Act.[47]

Water Quality Credit Trading

Water quality credit trading is a market-based approach to water quality improvements that can be used to control pollutants from sources that collectively worsen water quality conditions.[48] Water quality credit trading allows one source of pollution to control a pollutant at levels greater than required and to sell the resulting water quality credits to another source to supplement its level of treatment to comply with pollutant regulations.[49] This practice must result in water quality that is as good as or better than what would be achieved through meeting pollutant level requirements and must not create pollutant hotspots.[50] Water quality credit trades may result in a broad area of water quality improvement, while causing acute or chronic localized effects, or hotpots.[51]

The Florida Statutes provide a framework for water quality credit trading in the state. The DEP is the agency responsible for authorizing water quality credit trading in adopted BMAPs and for

[43] Section 373.4131(3)(c), F.S.
[44] Section 373.414(1)(b)3., F.S.
[45] DEP, *Clean Waterways Act Stormwater Rulemaking Technical Advisory Committee (TAC)*, https://floridadep.gov/CWA-TAC (last visited Feb 1, 2022).
[46] *Id.*
[47] *Id.*
[48] EPA, *Water Quality Trading*, https://www.epa.gov/npdes/water-quality-trading (last visited Jan. 26 2022).
[49] *Id.*
[50] *Id.*
[51] *Id.*

establishing the pollutant load reduction value of water quality credits.[52] The DEP cannot participate in the establishment of water quality credit prices. Water quality credit sellers are responsible for achieving the load reductions on which the water quality credits are based and complying with the terms of the DEP authorization and any trading agreements into which they have entered; buyers are responsible for complying with the terms of the DEP water discharge permit.[53] Land set-asides and land use modification not otherwise required by state law or a permit, including constructed wetlands or other water quality improvement projects, that reduce nutrient loads into impaired surface waters may be used for water quality credit trading.[54] In the past, water quality credits have been traded in the state, however there are no water quality credits available for trade as of January 28, 2022.[55]

Mitigation Banking

Generally, mitigation banking is a practice in which an environmental enhancement and preservation project is conducted by a public agency or private entity to provide mitigation for unavoidable wetland impacts within a defined mitigation service area.[56] The bank is the site itself, and the currency sold by the banker to the impact permittee is a credit, representing the wetland ecological value equivalent to the complete restoration of one acre.[57] The number of potential credits permitted for the bank, and the credit debits required for impact permits, are determined by the permitting agencies.[58]

Creation of a mitigation bank in Florida requires both a permit from the DEP or a WMD, and federal approval of a mitigation bank instrument from several agencies led by the U.S. Army Corps of Engineers (USACE), in a joint state/federal interagency review team.[59] Through this process, depending on agency approval, a mitigation bank may provide mitigation for permittees under both the federal and state permitting programs.

Requirements for permitting mitigation banks differ between mitigation bank instruments issued by the USACE and state permits issued by the DEP or the WMDs. Under the federal process, a mitigation banking instrument serves as the legal document for the establishment, operation, and use of a mitigation bank.[60] They are approved by an interagency review team, through procedures involving public notice and comment.[61] Mitigation banking instruments must include

[52] Section 403.067(8), F.S.
[53] Water quality credit trading must be implemented through permits, including water quality credit trading permits, other authorizations, or other legally binding agreements as establish by DEP rule. *Id.*
[54] *Id.*
[55] DEP, *Florida Water Quality Credit Trading Registry*, https://floridadep.gov/dear/water-quality-restoration/content/florida-water-quality-credit-trading-registry (Jan. 17, 2022); DEP, *Credits Traded Document* (Sept. 7, 2018) *available at* http://publicfiles.dep.state.fl.us/DEAR/DEARweb/BMAP/DEP%20WQCT%20Spreadsheet.pdf (last visited Jan. 27, 2022).
[56] DEP, *Mitigation and Mitigation Banking*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-and-mitigation-banking (last visited Jan. 26, 2022).
[57] *Id*.
[58] *Id*.
[59] DEP, *Mitigation Banking Rule and Procedure Synopsis*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-banking-rule-and (last visited Jan. 26, 2022).
[60] 33 C.F.R. s. 332.2.
[61] 33 C.F.R. s. 332.8; 40 C.F.R. s. 230.98.

certain detailed elements, such as a comprehensive mitigation plan including financial assurances, and a credit release schedule that is tied to the achievement of specific milestones.[62]

Under Florida law, to obtain a mitigation bank permit, the applicant must provide reasonable assurance that the mitigation bank will:

- Improve ecological conditions of the regional watershed;
- Provide viable and sustainable ecological and hydrological functions for the proposed mitigation service area;
- Be effectively managed in perpetuity;
- Not destroy areas with high ecological value;
- Achieve mitigation success; and
- Be adjacent to lands that will not adversely affect the long-term viability of the mitigation bank due to unsuitable land uses or conditions.[63]

The applicant must also provide reasonable assurance that:

- Any surface water management system that will be constructed, altered, operated, maintained, abandoned, or removed within a mitigation bank will meet the requirements of part IV of ch. 373, F.S., which regulates management and storage of surface waters, and rules adopted thereunder;
- The applicant has sufficient legal or equitable interest in the property to ensure perpetual protection and management of the land within a mitigation bank; and
- The applicant can meet the financial responsibility requirements prescribed for mitigation banks.[64]

Graywater, Residential Systems, and Development Incentives

Graywater is the part of domestic sewage that is not carried off by toilets, urinals, and kitchen drains. It includes waste from the bath, lavatory, laundry, and sink, except for kitchen sink waste.[65] Graywater installations occur in both residential and non-residential installations and the capture, treatment, and reuse of graywater yields usable water that would otherwise be directed to the sewer.[66] Reusing graywater also reduces the use of potable water for non-potable needs and conserves fresh water.[67]

The Florida Building Code specifies that graywater may only be used for flushing of toilets and urinals. Any discharge from the building must be connected to a public sewer or an onsite sewage treatment and disposal system in accordance with Department of Health regulations in

[62] *See generally* 33 C.F.R. s. 332.8(d)(6); *see also* 40 C.F.R. s. 230.98(d)(6).
[63] Section 373.4136(1), F.S.
[64] *Id*.; Fla. Admin. Code R. 62-342.400.
[65] Section 381.0065(2)(e), F.S.
[66] Alliance for Water Efficiency, *Graywater Systems*, https://www.allianceforwaterefficiency.org/resources/topic/graywater-systems (last visited Jan. 31, 2022).
[67] Martinez, Christopher J., *Gray Water Reuse in Florida*, University of Florida IFAS Extension, https://edis.ifas.ufl.edu/ae453#:~:text=Gray%20water%20must%20be%20filtered,to%20the%20sanitary%20drainage%20system (last visited Jan. 31, 2022).

chapter 64E-6 of the Florida Administrative Code.[68] Graywater systems in Florida have several requirements: the graywater must be filtered, disinfected, and dyed; and storage reservoirs must have drains and overflow pipes which must be indirectly connected to the sanitary drainage system.[69]

To encourage adoption of residential graywater reuse, states, counties, municipalities, or special districts are required to implement incentives for the use of graywater technologies.[70] To do this, they must authorize the use of residential graywater technologies in their respective jurisdictions and provide specific density or intensity bonuses to developers or homebuilders if a certain percentage of a proposed or existing development will have a graywater system installed.[71]

III. Effect of Proposed Changes:

Section 1 creates s. 373.4134, F.S. to authorize the creation of water quality enhancement areas (WQEAs). The bill lists the following legislative findings:

- Water quality will be improved and adverse water quality impacts of activities regulated under provisions of law relating to the management and storage of surface waters may be offset by WQEAs that provide offsite compensatory treatment;
- An expansion of existing authority for regional treatment to include offsite compensatory treatment in WQEAs to make water quality enhancement credits available for purchase by governmental entities to address impacts regulated by provisions of law relating to the management and storage of surface waters is needed;
- WQEAs will improve the certainty and long-term viability of water quality treatment systems;
- WQEAs are a valuable tool to assist governmental entities in satisfying the net improvement performance standard[72] to ensure significant reductions of pollutant loadings; and
- WQEAs that provide credits to governmental entities seeking permits under this bill and governmental entities seeking to meet an assigned basin management action plan (BMAP) allocation or reasonable assurance plan (RAP) are considered an appropriate and permittable option.

The bill provides the following definitions:

- "Enhancement credit" means a standard unit of measure which represents a quantity of pollutant removed;
- "Governmental entities" means any political subdivision of this state, including any state agency, department, county, municipality, special district, school district, utility authority, or other authority or instrumentality, agency, unit, or department thereof;

[68] 2020 Florida Building Code – Plumbing, Seventh Edition (Dec. 2020), *available at* https://codes.iccsafe.org/content/FLPC2020P1.
[69] *Id*.
[70] Section 403.892(2), F.S.
[71] *Id*.
[72] If the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the governing board or DEP shall consider mitigation measures proposed by or acceptable to the applicant that cause net improvement of the water quality in the receiving body of water for those parameters which do not meet standards. Section 373.414(1)(b)3., F.S.

- "Natural system" means an ecological system supporting aquatic and wetland-dependent natural resources, including fish and aquatic and wetland –dependant wildlife habitats;
- "Water quality enhancement area" means a natural system constructed, operated, managed, and maintained pursuant to a permit issued under this part for the purpose of providing offsite, compensatory, regional treatment within an identified enhancement service area, for which enhancement credits may be provided; and
- "Water quality enhancement area permit" means a permit issued for a WQEA which authorizes its construction, operation, management, and maintenance and the purchase and sale of credits.

The bill provides that the construction, operation, management, and maintenance of a WQEA must be approved through the environmental resource permitting (ERP) process. Department of Environmental Protection (DEP) rules pertaining to ERPs apply to WQEAs and credits. The bill provides that WQEA credits may be sold only to governmental entities. It provides that a WQEA must address contributions of pollutants or other constituents for those parameters in an enhancement service area that do not meet state water quality criteria. Further, the bill requires that a WQEA must use, create, or improve natural systems to improve water quality.

The bill allows a governmental entity to use a WQEA for its own water quality needs. However it may not act as a sponsor to construct, operate, manage, maintain, or market credits to third parties. Further, the bill prevents a local government from requiring a permit or otherwise regulating the operation of WQEAs. It provides that the issuance of a WQEA permit does not preclude the responsibility of an applicant to obtain other applicable federal, state, and local permits for the construction activities associated with the WQEA.

To obtain a WQEA permit, the bill directs an applicant to provide reasonable assurances that the proposed WQEA will:

- Meet the requirements for issuance of an ERP;
- Benefit water quality in the enhancement service area;
- Achieve defined performance or success criteria for the reduction of pollutants or other constituents that prevent receiving waters from meeting state water quality criteria;
- Ensure long-term pollutant reduction through effective operation and maintenance in perpetuity by designation of a responsible long-term maintenance entity supported by an endowment or other long-term financial assurance sufficient to assure perpetual operation and maintenance;
- Demonstrate sufficient legal or equitable interest in the property to ensure access and perpetual protection and management of land within the WQEA; and
- Provide for permanent preservation of the site through a conservation easement.

The bill requires a WQEA permit to provide for the assessment, valuation, and award of credits based on units of pollutant removed. It requires the DEP to base its determination of the award of enhancement credits on standard numerical models or analytical tools that establish the WQEAs ability to remove pollutants or constituents.

The bill requires that if a BMAP exists for the watershed in which the WQEA is located, the applicant must use the same numerical models or analytical tools used for the BMAP in WQEA

permit application. If a BMAP does not exist for the watershed in which the WQEA is located, the bill provides that the applicant, with the approval of the DEP, may submit as part of the permit application model parameters and results used by the DEP to develop a BMAP for a watershed with similar characteristics and pollutants as that where the WQEA is to be located. The bill requires that if the DEP determines that its numerical model or analytical tool used for a BMAP is not appropriate for the proposed WQEA, the applicant must use a standard numerical model of analytical tool for the WQEA.

It requires a WQEA application to include the following information to assist the DEP in determining credits:

- Rainfall data over the longest period of record available collected from the closest site to the proposed WQEA, preferably within the same drainage basin;
- Anticipated average annual water quality and quantity inflows to the proposed WQEA, based on published local data collected over a period of record that most closely matches the rainfall data;
- Site-specific conditions affecting the anticipated performance of the proposed WQEA, including the proposed treatment type and anticipated associated reduction rates, as demonstrated by the performance of other areas where the treatment type has been established and operating over a minimum of two consecutive wet and dry seasons; and
- Data from collection stations approved by the DEP in sites that the DEP deems sufficient to determine flows and local water quality conditions.

The bill provides that an issuance of a WQEA permit does not preclude the responsibility of an applicant to obtain other applicable federal, state, and local permits for the construction activities associated with the WQEA.

The bill provides that an applicant for a WQEA permit must propose a performance and success criteria monitoring and verification plan, with protocols to be implemented once the WQEA and sufficient to demonstrate that the area is meeting defined performance or success criteria for the reduction of pollutants or contaminants for which the credits were awarded by the DEP.

The bill provides that if a permittee fails to comply with the conditions of a WQEA permit, the DEP must revoke the permittee's ability to sell enhancement credits until the WQEA is compliant with the permit conditions.

The bill directs the DEP or the water management districts to authorize the sale and use of credits to governmental entities to offset adverse water quality impacts of activities regulated under the bill or to assist entities seeking to meet an assigned BMAP allocation or RAP. The bill allows an applicant to use water quality improvement projects that use natural systems or land use modifications, including constructed wetlands or minor impoundments that reduce pollutants to a receiving water body, to generate credits if approved by the DEP. The bill provides that a WQEA may not be located on lands purchased for conservation thorough the Florida Forever Act or Florida Preservation 2000 Act. The bill directs the DEP to provide for and maintain a ledger that tracks the award, release, and use of credits. In furtherance of the ledger requirement, the bill directs a WQEA operator to notify the DEP of the amount of credits sold or used within 30 days of the date the credits transaction is completed. It also directs a water management district that authorizes credit use to report to the DEP the amount of credits used by an applicant.

The bill provides that reductions in pollutant loading required under any state regulatory program are not eligible to be considered as credits. It specifies that credits may not be used by point source dischargers to satisfy regulatory requirements other than those necessary to obtain an ERP for construction and operation of the surface water management system of the site. The bill provides that use of credits is voluntary, and any landowner, discharger, or other responsible person implementing applicable management strategies specified in a BMAP or RAP may not be required to use credits to reduce pollutant loads to achieve pollutant reductions. Further, the bill provides that a local government may not deny the use of credits due to the location of the WQEA outside the jurisdiction of the local government.

The bill provides that the authority granted to the DEP by this bill is supplemental to the authority granted under the statutes regulating water quality credit trading. It authorizes the DEP to adopt rules to implement WQEAs.

Section 2 amends s. 403.892, F.S., to add to a condition to qualify for graywater technology use incentives that each residence forming part of a multifamily project must be serviced by its own residential graywater system or a master graywater collection and re-use system for the entire project. The bill also clarifies that the maintenance of the graywater system is the responsibility of the owner. The bill provides that the graywater technology use incentives do not apply to multifamily projects that are more than five stories and clarifies that whether a dwelling is occupied by an owner is not an eligibility criterion for a developer or homebuilder to receive incentives. The bill also corrects a reference.

Section 3 directs the DEP to adopt and modify rules relating to mitigation banks and activities in surface waters and wetlands to ensure that required financial assurances are equivalent and sufficient to provide for the long-term management of mitigation measures. The bill requires the DEP, in consultation with the water management districts, to include this required rulemaking in existing active rulemaking or to complete rule development by June 30, 2023.

Section 4 provides that the bill will take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Local governments may experience a negative fiscal impact from loss of permit application fees for stormwater treatment due to the bill preventing local governments from requiring water quality treatment to be located within their jurisdiction.[73] Other fiscal effects are indeterminate.

The state government may experience revenue increases from WQEA permit application fees. These fees would be based on acreage and would likely range from $420 to $14,000. The number of applicants is unknown. The new permit application fees would be deposited into the Permit Fee Trust Fund.[74]

According to the Department of Environmental Protection (DEP), it would incur costs from operating the WQEA program, because it would need eight additional staff members and associated travel. The total financial impact for these positions including salaries, benefits, expenses, and travel costs would be approximately $878,275 annually.[75]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Environmental Protection has identified numerous issues, as provided in its analysis.[76]

[73] DEP, *House Bill 965 Legislative Analysis* (Jan. 7, 2022) (on file with the Senate Committee on Environment and Natural Resources).
[74] *Id.*
[75] *Id.*
[76] *Id.*

VIII. Statutes Affected:

This bill creates section 373.4134 of the Florida Statutes.

This bill substantially amends section 403.892 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.)

PCS (666660) by Appropriations Committee (Recommended CS by Appropriations Subcommittee on Agriculture, Environment, and General Government):
The proposed committee substitute:

- Removes definitions for "enhancement service area" and "planning unit" from the underlying bill.
- Adds definition for "natural system".
- Adds that the DEP must use standard numerical models that establish a WQEA's ability to remove pollutants in its determination of the award of credits. The models may be based on basin management action plan (BMAP) numerical models for the watershed where the WQEA is located, a similar numerical model if no BMAP exists for a particular watershed, or a standard numerical model if a similar model is not appropriate.
- Removes from the underlying bill the provision that an enhancement service area must be based on a BMAP, reasonable assurance plan, or planning unit.
- Requires a WQEA permit applicant to propose a performance and success criteria monitoring and verification plan.
- Requires the DEP to revoke a permittee's ability to sell enhancement credits if the permittee fails to comply with WQEA permit conditions until the WQEA is in compliance.
- Removes exceptions in the underlying bill that would allow a WQEA to provide credits outside of an enhancement service area.
- Adds that before approving the use of enhancement credits, the DEP or water management district must determine that the enhancement credits are appropriate for a specific permit use.
- Adds that WQEAs may not be located on lands purchased for conservation pursuant to the Florida Forever Act or the Florida Preservation 2000 Act.
- Removes the section in the underlying bill authorizing the DEP to enter into agreements and contracts with public and private entities to accept and expand donations, grants of funds, and payments to expedite the evaluation of the entity's application for a dredge and fill permit or an environmental resource permit.
- Deletes the $2.04 million appropriation for 24 full-time equivalent positions in the underlying bill.

CS by Environment and Natural Resources on February 1, 2022:
The committee substitute:

- Specifies that only governmental entities may purchase and use water quality enhancement (WQEA) credits.
- Defines "governmental entity" as any political subdivision of the state, including any state agency, department, county, municipality, special district, school district, utility authority, or other authority or instrumentality, agency, unit, or department thereof.
- Removes the prohibition against water quality enhancement credits being used to compensate for wetland or other surface water impacts.
- Deletes the exception that allows water quality enhancement credit use outside of the enhancement service area for projects with total adverse impacts of less than one acre.
- Adds that DEP may enter into agreements and contracts with public or private entities to accept and expend donations, grants, and payments to expedite the evaluation of the entity's application for dredge and fill or environmental resource permits.
- Amends a condition to qualify for incentives for the use of graywater technologies to add that each residence that is part of a multifamily project will be serviced by either its own residential graywater system or a master graywater collection and reuse system for the entire project.
- Directs DEP to adopt and modify rules relating to mitigation banks and activities in surface waters and wetlands to ensure that required financial assurances are equivalent and sufficient to provide for the long-term management of mitigation measures.
- Appropriates $2.04 million in recurring funds, effective July 1, 2022, from the Grants and Donations Trust Fund to DEP and authorizes 24 full-time positions to evaluate dredge and fill and environmental resource permits for entities with which DEP has entered into agreements or contracts.

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: RS	.	
03/01/2022	.	
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The Committee on Appropriations (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete lines 86 - 185

and insert:

governmental entities seeking to meet an assigned basin management action plan allocation or reasonable assurance plan or for the purpose of achieving net improvement pursuant to s. 373.414(1)(b)3. after the governmental entity has provided reasonable assurance of meeting department rules for design and construction of all onsite stormwater management, or for the

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purpose of providing offsite stormwater treatment pursuant to s. 311.106 or s. 373.413(6) or meeting environmental resource permit rules adopted pursuant to this part.

(c) A water quality enhancement area must be used to address contributions of one or more pollutants or other constituents in the watershed, basin, sub-basin, targeted restoration area, waterbody, or section of waterbody, as determined by the department, in which the water quality enhancement area is located which do not meet applicable state water quality criteria.

(d) A water quality enhancement area must be employed to use, create, or improve natural systems in order to improve water quality.

(e) A governmental entity may use a water quality enhancement area for its own water quality needs. However, a governmental entity may not act as a sponsor to construct, operate, manage, or maintain a water quality enhancement area or market enhancement credits to third parties.

(f) A local government may not require a permit or otherwise impose regulations governing the operation of a water quality enhancement area.

(g) This section does not eliminate the obligation of an applicant for a water quality enhancement area permit or an applicant proposing to use enhancement credits to comply with all requirements of this part pertaining to adverse impacts to water quality in receiving waters and adjacent lands or wetlands.

(4) WATER QUALITY ENHANCEMENT AREA PERMIT.—

(a) To obtain a water quality enhancement area permit, the



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applicant must provide reasonable assurances that the proposed water quality enhancement area will be used to:

1. Meet the requirements for issuance of an environmental resource permit;

2. Benefit water quality in the watershed in which the water quality enhancement area is located;

3. Meet defined performance or success criteria for the reduction of one or more pollutants or other constituents that prevent receiving waters from meeting applicable state water quality criteria;

4. Ensure long-term pollutant reduction through effective operation and maintenance in perpetuity by designation of a responsible long-term maintenance entity supported by an endowment or other long-term financial assurance sufficient to assure perpetual operation and maintenance;

5. Demonstrate sufficient legal or equitable interest in the property to ensure access to and perpetual protection and management of the land within the water quality enhancement area; and

6. Provide for permanent preservation of the water quality enhancement area which meets the requirements of s. 704.06.

(b) The water quality enhancement area permit must provide for the assessment, valuation, and award of credits based on units of pollutant removed.

(c) The department shall base its determination of the award of enhancement credits on standard numerical models or analytical tools that establish the water quality enhancement area’s ability to remove pollutants or constituents.

1. Where a basin management action plan exists for the

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watershed in which the water quality enhancement area is located, the applicant must use the same numerical models or analytical tools used for that basin management action plan in the water quality enhancement area permit application.

2. If a basin management action plan does not exist for the watershed in which the water quality enhancement area is located, the applicant, with the approval of the department, may submit as part of the water quality enhancement area permit application model parameters and results used in a numerical model or analytical tool used by the department to develop a basin management action plan for a watershed with similar physical characteristics and pollutants as that where the proposed water quality enhancement area is to be located.

3. If the department determines that its numerical model or analytical tool used for a basin management action plan is not appropriate for the proposed water quality enhancement area, the applicant must use a standard numerical model or analytical tool for the proposed water quality enhancement area.

4. To assist the department in evaluating and determining enhancement credits, a water quality enhancement area permit application must include the numerical model or analytical tool results used to establish the water quality enhancement area's efficacy. Supporting information must include, but need not be limited to:

a. Rainfall data over the longest period of record available, collected from the closest site to the proposed water quality enhancement area, preferably within the same drainage basin.

b. Anticipated average annual water quality and quantity

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inflows to the proposed water quality enhancement area, based on published local data collected over a period of record which most closely matches the rainfall data under this paragraph.

c. Site-specific conditions affecting the anticipated performance of the proposed water quality enhancement area, including the proposed treatment type and the anticipated associated reduction rates, as demonstrated by the performance of other areas where the treatment type has been established and operating over a minimum of two consecutive wet and dry seasons.

d. Data provided pursuant to sub-subparagraphs a. and b. must be from monitoring stations the department deems sufficient to determine flows and local water quality conditions.

(d) The issuance of a water quality enhancement area permit under this section does not preclude the responsibility of an applicant to obtain other applicable federal, state, and local permits for the construction activities associated with the water quality enhancement area.

(5) WATER QUALITY ENHANCEMENT SERVICE AREA.—The department shall establish a water quality enhancement service area for each water quality enhancement area. Enhancement credits may be withdrawn and used only to address adverse impacts in the enhancement service area. The boundaries of the enhancement service area shall depend upon the geographic area where the enhancement area could reasonably be expected to address adverse impacts. Enhancement service areas may overlap, and enhancement service areas for two or more enhancement areas may be approved for a regional watershed.

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

638546

And the title is amended as follows:

Delete line 6

and insert:

quality enhancement areas and permits; requiring the Department of Environmental Protection to establish water quality enhancement service areas; providing requirements for the boundaries of such areas; requiring

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2022	.	
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The Committee on Appropriations (Burgess) recommended the following:

Senate Substitute for Amendment (638546) (with title amendment)

Delete lines 86 - 255
and insert:
governmental entities seeking to meet an assigned basin management action plan allocation or reasonable assurance plan or for the purpose of achieving net improvement pursuant to s. 373.414(1)(b)3. after the governmental entity has provided reasonable assurance of meeting department rules for design and



construction of all onsite stormwater management.

(c) A water quality enhancement area must be used to address contributions of one or more pollutants or other constituents in the watershed, basin, sub-basin, targeted restoration area, water body, or section of water body, as determined by the department, in which the water quality enhancement area is located which do not meet applicable state water quality criteria.

(d) A water quality enhancement area must be employed to use, create, or improve natural systems in order to improve water quality.

(e) A governmental entity may use a water quality enhancement area for its own water quality needs. However, a governmental entity may not act as a sponsor to construct, operate, manage, or maintain a water quality enhancement area or market enhancement credits to third parties.

(f) A local government may not require a permit or otherwise impose regulations governing the operation of a water quality enhancement area.

(g) This section does not eliminate the obligation of an applicant for a water quality enhancement area permit or an applicant proposing to use enhancement credits to comply with all requirements of this part pertaining to adverse impacts to water quality in receiving waters and adjacent lands or wetlands.

(4) WATER QUALITY ENHANCEMENT AREA PERMIT.—

(a) To obtain a water quality enhancement area permit, the applicant must provide reasonable assurances that the proposed water quality enhancement area will be used to:



1. Meet the requirements for issuance of an environmental resource permit;

2. Benefit water quality in the watershed in which the water quality enhancement area is located;

3. Meet defined performance or success criteria for the reduction of one or more pollutants or other constituents that prevent receiving waters from meeting applicable state water quality criteria;

4. Ensure long-term pollutant reduction through effective operation and maintenance in perpetuity by designation of a responsible long-term maintenance entity supported by an endowment or other long-term financial assurance sufficient to assure perpetual operation and maintenance;

5. Demonstrate sufficient legal or equitable interest in the property to ensure access to and perpetual protection and management of the land within the water quality enhancement area; and

6. Provide for permanent preservation of the water quality enhancement area which meets the requirements of s. 704.06.

(b) The water quality enhancement area permit must provide for the assessment, valuation, and award of credits based on units of pollutant removed.

(c) The department shall base its determination of the award of enhancement credits on standard numerical models or analytical tools that establish the water quality enhancement area’s ability to remove pollutants or constituents.

1. Where a basin management action plan exists for the watershed in which the water quality enhancement area is located, the applicant must use the same numerical models or


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analytical tools used for that basin management action plan in the water quality enhancement area permit application.

2. If a basin management action plan does not exist for the watershed in which the water quality enhancement area is located, the applicant, with the approval of the department, may submit as part of the water quality enhancement area permit application model parameters and results used in a numerical model or analytical tool used by the department to develop a basin management action plan for a watershed with similar physical characteristics and pollutants as that where the proposed water quality enhancement area is to be located.

3. If the department determines that its numerical model or analytical tool used for a basin management action plan is not appropriate for the proposed water quality enhancement area, the applicant must use a standard numerical model or analytical tool for the proposed water quality enhancement area.

4. To assist the department in evaluating and determining enhancement credits, a water quality enhancement area permit application must include the numerical model or analytical tool results used to establish the water quality enhancement area's efficacy. Supporting information must include, but need not be limited to:

a. Rainfall data over the longest period of record available, collected from the closest site to the proposed water quality enhancement area, preferably within the same drainage basin.

b. Anticipated average annual water quality and quantity inflows to the proposed water quality enhancement area, based on published local data collected over a period of record which



most closely matches the rainfall data under this paragraph.

c. Site-specific conditions affecting the anticipated performance of the proposed water quality enhancement area, including the proposed treatment type and the anticipated associated reduction rates, as demonstrated by the performance of other areas where the treatment type has been established and operating over a minimum of two consecutive wet and dry seasons.

5. Data provided pursuant to sub-subparagraphs 4.a. and 4.b. must be from monitoring stations the department deems sufficient to determine flows and local water quality conditions.

(d) The issuance of a water quality enhancement area permit under this section does not preclude the responsibility of an applicant to obtain other applicable federal, state, and local permits for the construction activities associated with the water quality enhancement area.

(5) WATER QUALITY ENHANCEMENT SERVICE AREA.—The department shall establish a water quality enhancement service area for each water quality enhancement area. Enhancement credits may be withdrawn and used only to address adverse impacts in the enhancement service area. The boundaries of the enhancement service area shall depend upon the geographic area where the enhancement area could reasonably be expected to address adverse impacts. Enhancement service areas may overlap, and enhancement service areas for two or more enhancement areas may be approved for a regional watershed.

(6) MONITORING AND VERIFICATION.—

(a) An applicant for a water quality enhancement area permit must propose a performance and success criteria


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monitoring and verification plan, with protocols to be implemented once the water quality enhancement area is operational. The protocols must be appropriate for the water quality enhancement area and sufficient to demonstrate that the area is meeting defined performance or success criteria for the reduction of pollutants or contaminants for which credits are awarded by the department.

(b) If a permittee fails to comply with the conditions of a water quality enhancement area permit, the department must revoke the permittee's ability to sell enhancement credits until the water quality enhancement area is compliant with the permit conditions.

(7) ENHANCEMENT CREDITS.—

(a) The department or water management district shall authorize the sale and use of enhancement credits to governmental entities to address adverse water quality impacts of activities regulated under this part or to assist governmental entities seeking to meet required nonpoint source contribution reductions assigned in a basin management action plan or reasonable assurance plan pursuant to s. 403.067.

(b) Before approving the use of enhancement credits, the department or water management district must determine that the enhancement credits used by an applicant seeking a permit under this part are appropriate for a specific permit use.

(c) Water quality improvement projects using natural systems or land use modifications, including, but not limited to, constructed wetlands or minor impoundments that reduce pollutants to a receiving water body, may be used by an applicant to generate enhancement credits if approved by the



department. Water quality enhancement areas may not be located on lands purchased for conservation pursuant to the Florida Forever Act or the Florida Preservation 2000 Act.

(d) The department shall provide for and maintain a ledger that tracks the award, release, and use of enhancement credits.

1. A water management district that authorizes applicants seeking permits under this part to use enhancement credits to address water quality impacts must report to the department the amount of enhancement credits used by the applicants.

2. The operator of a water quality enhancement area shall notify the department of the amount of enhancement credits sold or used within 30 days after the date the enhancement credit transaction is completed.

(e) Reductions in pollutant loading required under any state regulatory program are not eligible to be considered as enhancement credits.

(f) Enhancement credits may not be used by point source dischargers to satisfy regulatory requirements other than those necessary to obtain an environmental resource permit for construction and operation of the surface water management system of the site.

(g) Use of enhancement credits made available by water quality enhancement areas is voluntary.

(h) Any landowner, discharger, or other responsible person regulated under this part or s. 403.067 implementing applicable management strategies specified in an adopted basin management action plan or reasonable assurance plan may not be required by any permit or other enforcement action to use enhancement credits to reduce pollutant loads to achieve the pollutant


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reductions established pursuant to s. 403.067.

(i) A local government may not deny the use of enhancement credits due to the location of the water quality enhancement area outside the jurisdiction of the local government.

(j) Notwithstanding any other provision of law, nothing in this section may be construed to limit or restrict the authority of the department to deny the use of enhancement credits when the department is not reasonably assured that the use of the credits will not cause or contribute to a violation of water quality standards, even if the project being implemented by the governmental entity is within the enhancement service area. If the department receives a request for the use of enhancement credits and it determines that their use will not cause or contribute to a violation of water quality standards, the department may allow their use.

(8) AUTHORITY.—The authority granted to the department under this section is supplemental to the authority granted under s. 403.067(8).

(9) RULES.—The department shall adopt rules to implement this section. This section may not be implemented until the department adopts such rules.

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

And the title is amended as follows:

Delete lines 6 - 19

and insert:

quality enhancement areas and permits; providing requirements for such water quality enhancement area permits; requiring the Department of Environmental


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Protection to establish water quality enhancement service areas; providing requirements for the boundaries of such areas; requiring applicants to propose performance and success criteria monitoring and verification plans that meet certain requirements; requiring the Department of Environmental Protection to revoke a permit under certain conditions; providing requirements for enhancement credits; requiring the department and water management districts to authorize the sale and use of enhancement credits to governmental entities to address certain adverse water quality impacts and to meet certain water quality requirements; requiring the department to maintain enhancement credit ledgers; authorizing the department to deny or authorize the use of enhancement credits under certain circumstances; providing construction; requiring the department to adopt rules; delaying implementation of certain provisions until the adoption of such rules; amending s. 403.892, F.S.; correcting a

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2022	.	
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The Committee on Appropriations (Burgess) recommended the following:

Senate Amendment (with directory amendment)

Delete lines 270 - 280

and insert:

detached single-family residential homes ~~that are either detached~~ or 25 multifamily dwelling units, which may include apartments ~~dwellings~~. ~~This paragraph does not apply to multifamily projects over five stories in height.~~

(b) Each single-family residential home or residence will have its own residential graywater system ~~that is~~ dedicated for

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its use. Each residence forming part of a multifamily project will be serviced by either its own residential graywater system dedicated for its use or a master graywater collection and reuse system for the entire project.

(d) The required maintenance of the graywater system will be the responsibility of the owner ~~residential homeowner~~.

(e) An operation and maintenance manual for the graywater system will be supplied to either the initial owner of the residence or the initial owner of a multifamily project that will be serviced by a master graywater collection and reuse system ~~the initial homeowner of each home~~. The manual must ~~shall~~ provide a method of contacting the installer or manufacturer and must ~~shall~~ include directions to the initial owner ~~residential homeowner~~ that the manual shall remain with the residence or the project throughout the life cycle of the system.

====== 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 257
and insert:
(a), (b), (d), and (e) of subsection (3) of section 403.892, Florida


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576-03100-22

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Agriculture, Environment, and General Government)

A bill to be entitled

An act relating to environmental management; creating s. 373.4134, F.S.; providing legislative findings and intent; defining terms; providing for water quality enhancement areas; providing requirements for water quality enhancement areas and permits; requiring applicants to propose performance and success criteria monitoring and verification plans that meet certain requirements; providing requirements for enhancement credits; requiring the Department of Environmental Protection to revoke a permit under certain conditions; requiring the department and water management districts to authorize the sale and use of enhancement credits to governmental entities to address certain adverse water quality impacts and to meet certain water quality requirements; requiring the department to maintain enhancement credit ledgers; providing construction; authorizing the department to adopt rules; amending s. 403.892, F.S.; correcting a cross-reference; revising the conditions that a developer or homebuilder must certify it meets as part of its application for development approval or amendment of a development order; providing applicability; requiring the department to adopt and modify specified rules, as applicable; providing requirements for such rulemaking; providing an


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576-03100-22

effective date.

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

Section 1. Section 373.4134, Florida Statutes, is created to read:

373.4134 Water quality enhancement areas.—

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

(a) Water quality will be improved and adverse water quality impacts of activities regulated under this part may be offset by the construction, operation, maintenance, and long-term management of water quality enhancement areas that provide offsite compensatory treatment.

(b) An expansion of existing authority for regional treatment to include offsite compensatory treatment in water quality enhancement areas to make credits available for purchase by governmental entities to address impacts regulated under this part is needed.

(c) The construction, operation, maintenance, and long-term management of water quality enhancement areas pursuant to this section will improve the certainty and long-term viability of water quality treatment systems.

(d) Water quality enhancement areas are a valuable tool to assist governmental entities in satisfying the net improvement performance standard pursuant to s. 373.414(1)(b)3. to ensure significant reductions of pollutant loadings.

(e) Water quality enhancement areas that provide water quality enhancement credits to governmental entities seeking

permits under this part and to governmental entities seeking to meet an assigned basin management action plan allocation or reasonable assurance plan pursuant to s. 403.067 are considered an appropriate and permittable option.

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

(a) "Enhancement credit" means a standard unit of measure which represents a quantity of pollutant removed.

(b) "Governmental entity" means any political subdivision of the state, including any state agency, department, agency of the state, county, municipality, special district, school district, utility authority, or other authority or instrumentality, agency, unit, or department thereof.

(c) "Natural system" means an ecological system supporting aquatic and wetland-dependent natural resources, including fish and aquatic and wetland-dependent wildlife habitats.

(d) "Water quality enhancement area" means a natural system constructed, operated, managed, and maintained for the purpose of providing offsite regional treatment for which enhancement credits may be provided pursuant to a water quality enhancement area permit issued under this section.

(e) "Water quality enhancement area permit" means an environmental resource permit issued for a water quality enhancement area which authorizes the construction, operation, management, and maintenance of an enhancement area and the purchase and sale of enhancement credits.

(3) WATER QUALITY ENHANCEMENT AREAS.—

(a) The construction, operation, management, and maintenance of a water quality enhancement area must be approved through the environmental resource permitting process.

(b) Water quality enhancement credits may be sold only to governmental entities.

(c) A water quality enhancement area must be used to address contributions of one or more pollutants or other constituents in the watershed in which the water quality enhancement area is located which do not meet applicable state water quality criteria.

(d) A water quality enhancement area must be employed to use, create, or improve natural systems in order to improve water quality.

(e) A governmental entity may use a water quality enhancement area for its own water quality needs. However, a governmental entity may not act as a sponsor to construct, operate, manage, or maintain a water quality enhancement area or market enhancement credits to third parties.

(f) A local government may not require a permit or otherwise impose regulations governing the operation of a water quality enhancement area.

(g) This section does not eliminate the obligation of an applicant for a water quality enhancement area permit or an applicant proposing to use enhancement credits to comply with all requirements of this part pertaining to adverse impacts to water quality in receiving waters and adjacent lands or wetlands.

(4) WATER QUALITY ENHANCEMENT AREA PERMIT.—

(a) To obtain a water quality enhancement area permit, the applicant must provide reasonable assurances that the proposed water quality enhancement area will be used to:

1. Meet the requirements for issuance of an environmental

resource permit;

2. Benefit water quality in the watershed in which the water quality enhancement area is located;

3. Meet defined performance or success criteria for the reduction of one or more pollutants or other constituents that prevent receiving waters from meeting applicable state water quality criteria;

4. Ensure long-term pollutant reduction through effective operation and maintenance in perpetuity by designation of a responsible long-term maintenance entity supported by an endowment or other long-term financial assurance sufficient to assure perpetual operation and maintenance;

5. Demonstrate sufficient legal or equitable interest in the property to ensure access and perpetual protection and management of the land within the water quality enhancement area; and

6. Provide for permanent preservation of the water quality enhancement area which meets the requirements of s. 704.06.

(b) The water quality enhancement area permit must provide for the assessment, valuation, and award of credits based on units of pollutant removed.

(c) The department shall base its determination of the award of enhancement credits on standard numerical models or analytical tools that establish the water quality enhancement area's ability to remove pollutants or constituents.

1. Where a basin management action plan exists for the watershed in which the water quality enhancement area is located, the applicant must use the same numerical models or analytical tools used for that basin management action plan in

the water quality enhancement area permit application.

2. If a basin management action plan does not exist for the watershed in which the water quality enhancement area is located, the applicant, with the approval of the department, may submit as part of the water quality enhancement area permit application model parameters and results used in a numerical model or analytical tool used by the department to develop a basin management action plan for a watershed with similar physical characteristics and pollutants as that where the proposed water quality enhancement area is to be located.

3. If the department determines that its numerical model or analytical tool used for a basin management action plan is not appropriate for the proposed water quality enhancement area, the applicant must use a standard numerical model or analytical tool for the proposed water quality enhancement area.

4. To assist the department in evaluating and determining enhancement credits, a water quality enhancement area permit application must include the numerical model or analytical tool results used to establish the water quality enhancement area's efficacy. Supporting information must include, but need not be limited to:

a. Rainfall data over the longest period of record available, collected from the closest site to the proposed water quality enhancement area, preferably within the same drainage basin.

b. Anticipated average annual water quality and quantity inflows to the proposed water quality enhancement area, based on published local data collected over a period of record which most closely matches the rainfall data under this paragraph.

c. Site-specific conditions affecting the anticipated performance of the proposed water quality enhancement area, including the proposed treatment type and the anticipated associated reduction rates, as demonstrated by the performance of other areas where the treatment type has been established and operating over a minimum of two consecutive wet and dry seasons.

d. Data provided pursuant to sub-subparagraphs a. and b. must be from monitoring stations the department deems sufficient to determine flows and local water quality conditions.

(d) The issuance of a water quality enhancement area permit under this section does not preclude the responsibility of an applicant to obtain other applicable federal, state, and local permits for the construction activities associated with the water quality enhancement area.

(5) MONITORING AND VERIFICATION.—

(a) An applicant for a water quality enhancement area permit must propose a performance and success criteria monitoring and verification plan, with protocols to be implemented once the water quality enhancement area is operational. The protocols must be appropriate for the water quality enhancement area and sufficient to demonstrate that the area is meeting defined performance or success criteria for the reduction of pollutants or contaminants for which credits are awarded by the department.

(b) If a permittee fails to comply with the conditions of a water quality enhancement area permit, the department must revoke the permittee’s ability to sell enhancement credits until the water quality enhancement area is compliant with the permit conditions.

(6) ENHANCEMENT CREDITS.—

(a) The department or water management district shall authorize the sale and use of enhancement credits to governmental entities to address adverse water quality impacts of activities regulated under this part or to assist governmental entities seeking to meet required nonpoint source contribution reductions assigned in a basin management action plan or reasonable assurance plan pursuant to s. 403.067.

(b) Before approving the use of enhancement credits, the department or water management district must determine that the enhancement credits used by an applicant seeking a permit under this part are appropriate for a specific permit use.

(c) Water quality improvement projects using natural systems or land use modifications, including, but not limited to, constructed wetlands or minor impoundments that reduce pollutants to a receiving water body, may be used by an applicant to generate enhancement credits if approved by the department. Water quality enhancement areas may not be located on lands purchased for conservation pursuant to the Florida Forever Act or the Florida Preservation 2000 Act.

(d) The department shall provide for and maintain a ledger that tracks the award, release, and use of enhancement credits.

1. A water management district that authorizes applicants seeking permits under this part to use enhancement credits to address water quality impacts must report to the department the amount of enhancement credits used by the applicants.

2. The operator of a water quality enhancement area shall notify the department of the amount of enhancement credits sold or used within 30 days after the date the enhancement credit

transaction is completed.

(e) Reductions in pollutant loading required under any state regulatory program are not eligible to be considered as enhancement credits.

(f) Enhancement credits may not be used by point source dischargers to satisfy regulatory requirements other than those necessary to obtain an environmental resource permit for construction and operation of the surface water management system of the site.

(g) Use of enhancement credits made available by water quality enhancement areas is voluntary.

(h) Any landowner, discharger, or other responsible person regulated under this part or s. 403.067 implementing applicable management strategies specified in an adopted basin management action plan or reasonable assurance plan may not be required by any permit or other enforcement action to use enhancement credits to reduce pollutant loads to achieve the pollutant reductions established pursuant to s. 403.067.

(i) A local government may not deny the use of enhancement credits due to the location of the water quality enhancement area outside the jurisdiction of the local government.

(7) AUTHORITY.—The authority granted to the department under this section is supplemental to the authority granted under s. 403.067(8).

(8) RULES.—The department may adopt rules to implement this section.

Section 2. Paragraph (b) of subsection (1) and paragraphs (a), (b), and (d) of subsection (3) of section 403.892, Florida Statutes, are amended, and subsection (6) is added to that

section, to read:

403.892 Incentives for the use of graywater technologies.—

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

(b) "Graywater" has the same meaning as in s. 381.0065(2)(f) ~~s. 381.0065(2)(c)~~.

(3) To qualify for the incentives under subsection (2), the developer or homebuilder must certify to the applicable governmental entity as part of its application for development approval or amendment of a development order that all of the following conditions are met:

(a) The proposed or existing development has at least 25 single-family residential homes that are either detached or multifamily dwellings. ~~This paragraph does not apply to multifamily projects over five stories in height.~~

(b) Each single-family residential home or residence will have its own residential graywater system ~~that is~~ dedicated for its use. Each residence forming part of a multifamily project will be serviced by either its own residential graywater system dedicated for its use or a master graywater collection and reuse system for the entire project.

(d) The required maintenance of the graywater system will be the responsibility of the owner ~~residential homeowner~~.

(6) This section does not apply to multifamily projects more than five stories in height. Whether a dwelling is occupied by an owner is not an eligibility criterion for a developer or homebuilder to receive the incentives authorized pursuant to this section.

Section 3. The Department of Environmental Protection shall adopt and modify rules adopted pursuant to ss. 373.4136 and

373.414, Florida Statutes, to ensure that required financial assurances are equivalent and sufficient to provide for the long-term management of mitigation permitted under ss. 373.4136 and 373.414, Florida Statutes. The department, in consultation with the water management districts, shall include the rulemaking required by this section in existing active rulemaking or shall complete rule development by June 30, 2023.

Section 4. This act shall take effect upon becoming a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1426
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Environment and Natural Resources Committee; and Senator Burgess
SUBJECT:	Environmental Management
DATE:	March 2, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carroll	Rogers	EN	**Fav/CS**
2.	Reagan	Betta	AEG	**Recommend: Fav/CS**
3.	Reagan	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1426 creates the concept of water quality enhancement areas (WQEAs). A WQEA is a natural system that is constructed, operated, managed, and maintained pursuant to a permit to provide offsite, compensatory, regional treatment within an identified enhancement service area and enhancement credits.

The bill provides that construction, operation, management, and maintenance of a WQEA must be approved through the environmental resource permitting (ERP) process. The bill sets out requirements for a water quality credit program based on the development of WQEAs and authorizes the Department of Environmental Protection (DEP) to develop rules to implement the program. Water quality enhancement credits may be sold only to governmental entities.

The bill makes clarifications regarding incentives for the use of graywater technologies.

According to the DEP, the department would incur costs from operating the WQEA program, as the program would need eight additional staff members and associated travel. The total financial impact for these positions including salaries, benefits, expenses, and travel costs would be approximately $878,275 annually.

II. Present Situation:

Water Quality and Nutrients

Phosphorous and nitrogen are naturally present in water and are essential nutrients for the healthy growth of plant and animal life.[1] The correct balance of both nutrients is necessary for a healthy ecosystem; however, excessive amounts can cause significant water quality problems.

Phosphorous and nitrogen are derived from natural and human-made sources. Human-made sources include sewage disposal systems (wastewater treatment facilities and septic systems), overflows of storm and sanitary sewers (untreated sewage), agricultural production and irrigation practices, and stormwater runoff.[2]

Excessive nutrient loads may result in harmful algal blooms, nuisance aquatic weeds, and the alteration of the natural community of plants and animals. Dense, harmful algal blooms can also cause human health problems, fish kills, problems for water treatment plants, and impairment of the aesthetics and taste of waters. Growth of nuisance aquatic weeds tends to increase in nutrient-enriched waters, which can impact recreational activities.[3]

Total Maximum Daily Loads

A total maximum daily load (TMDL), which must be adopted by rule, is a scientific determination of the maximum amount of a given pollutant that can be absorbed by a waterbody and still meet water quality standards.[4] Waterbodies or sections of waterbodies that do not meet the established water quality standards are deemed impaired. Pursuant to the federal Clean Water Act, the Department of Environmental Protection (DEP) must establish a TMDL for impaired waterbodies.[5] A TMDL for an impaired waterbody is the sum of the individual waste load allocations for point sources and the load allocations for nonpoint sources and natural background.[6] Point sources are discernible, confined, and discrete conveyances including pipes, ditches, and tunnels. Nonpoint sources are unconfined sources that include runoff from agricultural lands or residential areas.[7]

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[1] U.S. Environmental Protection Agency (EPA), *Sources and Solutions*, https://www.epa.gov/nutrientpollution/sources-and-solutions (last visited Jan. 26, 2022).
[2] *Id.*
[3] EPA, *The Issue*, https://www.epa.gov/nutrientpollution/problem (last visited Jan. 26, 2022).
[4] Department of Environmental Protection (DEP), *Total Maximum Daily Loads Program*, https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program (last visited Jan. 26, 2022).
[5] Section 403.067(1), F.S.
[6] Section 403.031(21), F.S.
[7] Fla. Admin. Code R. 62-620.200(37). "Point source" is defined as "any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged." Nonpoint sources of pollution are sources of pollution that are not point sources. Nonpoint sources can include runoff from agricultural lands or residential areas; oil, grease and toxic materials from urban runoff; and sediment from improperly managed construction sites.

Basin Management Action Plans and Best Management Practices

The DEP is the lead agency in coordinating the development and implementation of TMDLs.[8] Basin management action plans (BMAPs) are one of the primary mechanisms DEP uses to achieve TMDLs. BMAPs are plans that address the entire pollution load, including point and nonpoint discharges,[9] for a watershed or a specific waterbody. BMAPs generally include:

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Best management practices (BMPs) and non-regulatory and incentive-based programs, including cost-sharing, waste minimization, pollution prevention, agreements, and public education;
- Public works projects, including capital facilities; and
- Land acquisition.[10]

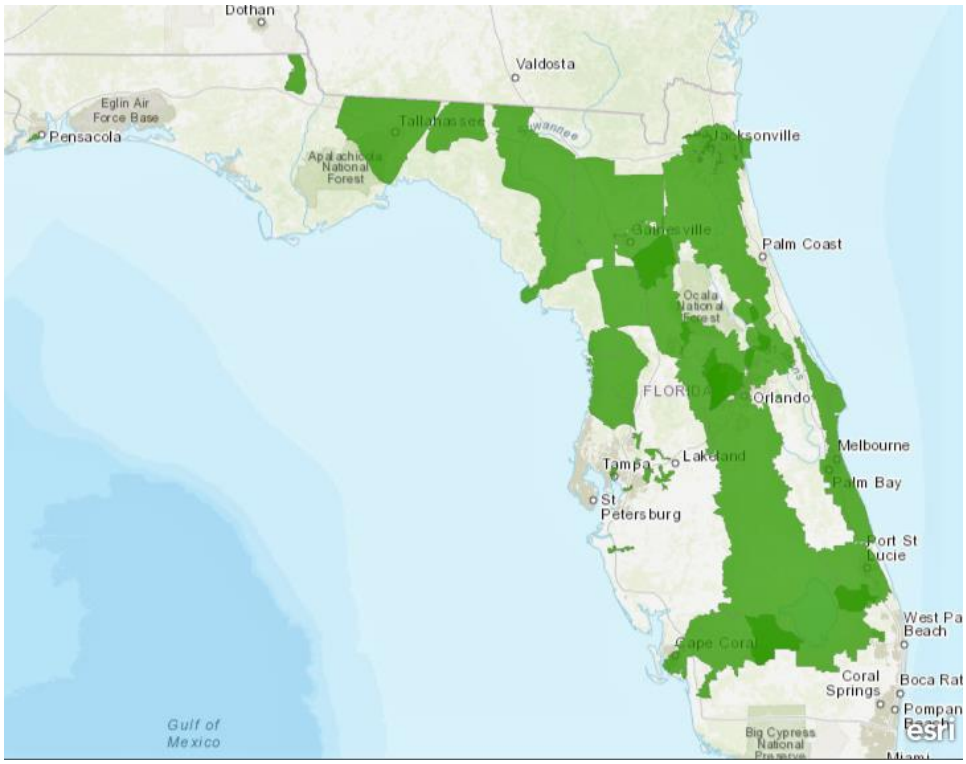
A BMAP equitably allocates pollutant reductions to individual basins, to all basins as a whole, or to each identified point source or category of nonpoint sources.[11] Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations. The BMAP development process provides an opportunity for local stakeholders, local government, community leaders, and the public to determine and share water quality cleanup responsibilities collectively.[12]

BMAPs must include milestones for implementation and water quality improvement.[13] They must also include an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones must be conducted every five years, and revisions to the BMAP must be made as appropriate.[14]

Producers of nonpoint source pollution included in a BMAP must comply with the established pollutant reductions by either implementing the appropriate BMPs or by conducting water quality monitoring.[15] A nonpoint source discharger may be subject to enforcement action by the DEP or a water management district (WMD) based on a failure to implement these requirements.[16] BMPs are designed to reduce the amount of nutrients, sediments, and pesticides

[8] Section 403.061, F.S. DEP has the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. Furthermore, s. 403.061(21), F.S., allows DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.
[9] Fla. Admin. Code R. 62-620.200(37). "Point source" is defined as "any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged." Nonpoint sources of pollution are sources of pollution that are not point sources.
[10] Section 403.067(7), F.S.
[11] *Id*.
[12] DEP, *Basin Management Action Plans (BMAPs)*, https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps (last visited Dec. 4, 2019).
[13] Section 403.067(7)(a)6., F.S.
[14] *Id.*
[15] Section 403.067(7)(b)2.g., F.S. For example, BMPs for agriculture include activities such as managing irrigation water to minimize losses, limiting the use of fertilizers, and waste management.
[16] Section 403.067(7)(b)2.h., F.S.

that enter the water system and to help reduce water use. BMPs are developed for agricultural operations as well as for other activities, such as nutrient management on golf courses, forestry operations, and stormwater management.[17] The graphic below shows the state's BMAPs.[18]



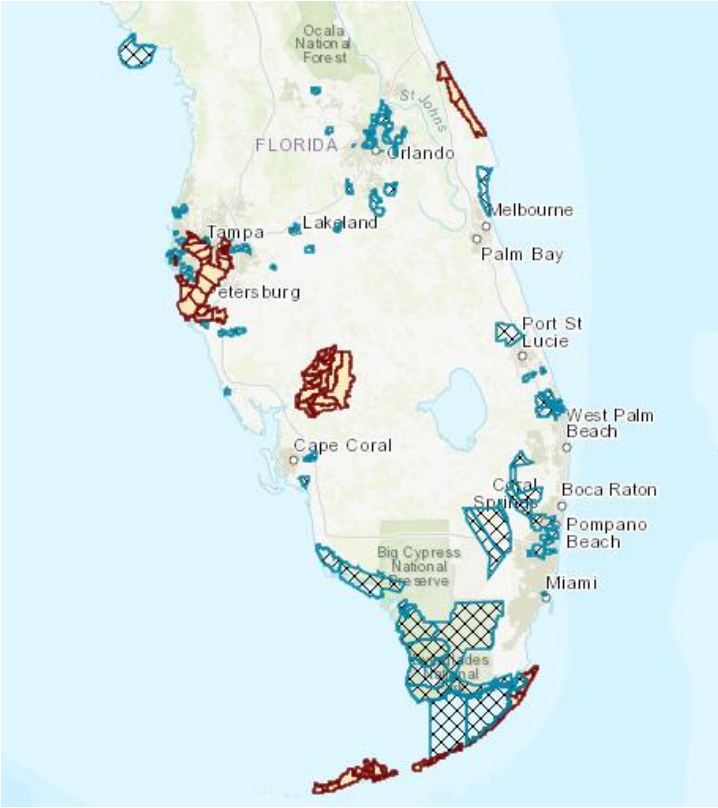
Reasonable Assurance Plans

The U.S. Environmental Protection Agency allows states to place certain impaired waterbodies into Category 4b for Clean Water Act section 303(d) reporting purposes, meaning that the establishment of a TMDL is not required for an impaired waterbody if other required control measures are expected to result in the attainment of water quality standards in a reasonable period of time.[19]

A Reasonable Assurance Plan (RAP) is a control measure that the DEP may implement for Category 4b impaired waterbodies.[20] The DEP first determines if a waterbody is impaired or may be reasonably expected to become impaired within the next five years.[21] If a waterbody fits this criteria, the DEP evaluates whether existing or proposed technology-based effluent limitations and other pollution control programs are sufficient to result in the attainment of water quality

[17] DEP, *NPDES Stormwater Program*, https://floridadep.gov/Water/Stormwater (last visited Jan. 26, 2022).
[18] DEP, *Impaired Waters, TMDLs, and Basin Management Action Plans Interactive Map*, https://floridadep.gov/dear/water-quality-restoration/content/impaired-waters-tmdls-and-basin-management-action-plans (last visited Jan. 26, 2022).
[19] *Id.*; EPA, *EPA Integrated Reporting (IR) Categories and How ATTAINS Calculates Them*, 1 (Aug. 31, 2018) *available at* https://www.epa.gov/sites/default/files/2018-09/documents/attains_calculations_of_epa_ir_categories_2018-08-31.pdf (last visited Jan. 27, 2022).
[20] DEP, *Alternative Restoration Plans*, https://floridadep.gov/DEAR/Alternative-Restoration-Plans (last visited Jan. 27, 2022).
[21] Fla. Admin. Code R. 62-303.600.

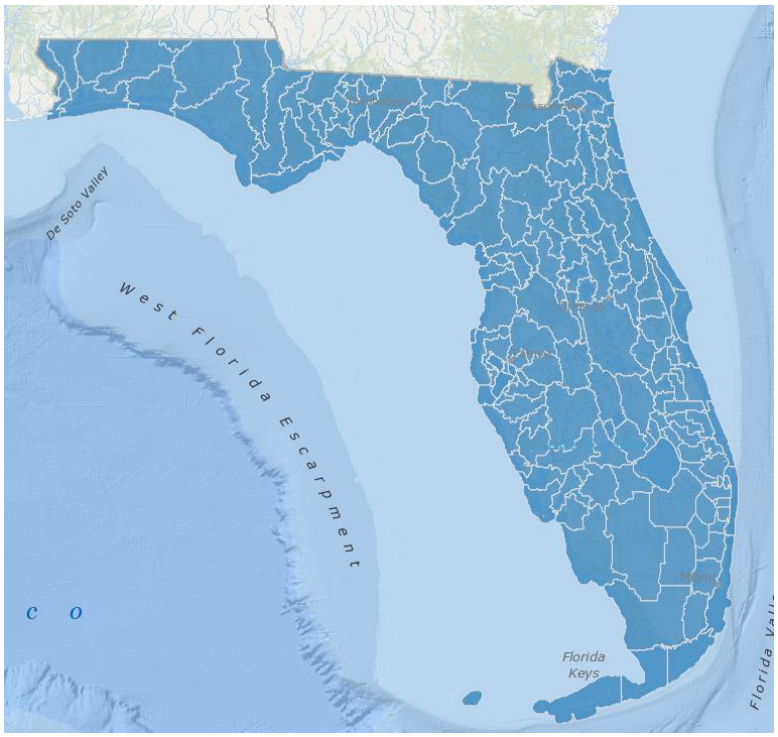
standards. If the waterbody is expected to attain water quality standards in the future and to make reasonable progress towards attainment of those standards in a certain timeframe, the waterbody will not require a TMDL. The DEP's decision must be based on a plan that provides reasonable assurance that proposed pollution control mechanisms and expected water quality improvements in the waterbody will attain water quality standards.[22] The graphic on the right shows the RAP boundaries in the outlined areas without a grid.[23]



Planning Units

A planning unit is either an individual large tributary basin or a group of smaller adjacent tributary basins with similar characteristics.[24] Planning units help organize information and management strategies around prominent watershed characteristics, and they provide a more detailed geographic basis for identifying and assessing water quality improvement activities.[25] The graphic on the next page shows the state's planning units.[26]

[22] *Id.*
[23] DEP, *Restoration Plans*, https://fdep.maps.arcgis.com/apps/View/index.html?appid=5a34b0e9d46447559b52d8267083596f (last visited Jan. 28, 2022).
[24] DEP, *TMDL Planning Units*, https://geodata.dep.state.fl.us/datasets/c97e066f49044131a13a79f5beeeaf40_6/about (last visited Jan. 27, 2022).
[25] *Id.*
[26] DEP, *TMDL Planning Units, Geospatial Open Data*, https://geodata.dep.state.fl.us/datasets/FDEP::total-maximum-daily-load-tmdl-planning-units/explore?location=27.664924%2C-83.725800%2C7.00 (last visited Jan. 28, 2022).



Stormwater Management

Stormwater is the flow of water resulting from, and immediately following, a rainfall event.[27] When stormwater falls on pavement, buildings, and other impermeable surfaces, the runoff flows quickly and can pick up sediment, trash, chemicals, and other pollutants.[28] Stormwater is a major source of water pollution in Florida.[29]

The regulatory programs that address reductions in water quality caused by stormwater are the federal National Pollution Discharge Elimination System (NPDES), which regulates discharges of pollutants into waters of the United States,[30] and the state Environmental Resource Permitting (ERP) Program, which regulates activities involving the alteration of surface water flows.[31]

[27] DEP and Water Management Districts, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)*, 2-10 (June 1, 2018), *available at* https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Appliicant_Hanbook_I_-_Combined.pd_0.pdf.
[28] DEP, *Stormwater Management*, 1 (2016), *available at* https://floridadep.gov/sites/default/files/stormwater-management_0.pdf. When rain falls on fields, forests, and other areas with naturally permeable surfaces the water not absorbed by plants filters through the soil and replenishes Florida's groundwater supply.
[29] DEP, *Stormwater Support*, https://floridadep.gov/water/engineering-hydrology-geology/content/stormwater-support (last visited Oct. 6, 2021); DEP, *Nonpoint Source Program Update*, 10 (2015), *available at* https://floridadep.gov/sites/default/files/NPS-ManagementPlan2015.pdf.
[30] National Pollutant Discharge Elimination System (NPDES), 33 U.S.C. s. 1342 (2019); 40 C.F.R. pt. 122; Under the Clean Water Act, the U.S. Environmental Protection Agency authorizes the NPEDS permit program to state, tribal, and territorial governments, enabling them to perform many of the permitting, administrative, and enforcement aspects of the program. EPA, *About NPDES*, https://www.epa.gov/npdes/about-npdes#overview (last visited Jan. 27, 2022).
[31] Chapter 373, pt. IV, F.S.; Fla. Admin. Code Ch. 62-330.

The NPDES regulates stormwater pollution from certain municipal storm sewer systems and runoff from certain construction and industrial activities.[32] The state's ERP program regulates activities that create stormwater runoff, as well as dredging and filling in wetlands and other surface waters.[33] ERPs aim to prevent flooding, protect wetlands and other surface waters, and protect water quality from stormwater pollution.[34] The DEP, the WMDs, and local governments implement the ERP program.[35]

The DEP and the WMDs may require ERPs and impose reasonable conditions:

- To ensure that construction or alteration of stormwater management systems and related structures is consistent with applicable law and not harmful to water resources;[36] and
- For the maintenance or operation of such structures.[37]

The DEP's stormwater rules are technology-based effluent limitations, rather than water quality-based effluent limitations.[38] This means that stormwater rules rely on design criteria for BMPs to achieve a performance standard for pollution reduction, rather than specifying the amount of a specific pollutant that may be discharged to a waterbody and still ensure that the waterbody attains water quality standards.[39] The rules contain minimum stormwater treatment performance standards, which require design and performance criteria for new stormwater management systems to achieve at least 80 percent reduction of the average annual load of pollutants that would cause or contribute to violations of state water quality standards.[40]

The DEP and the WMDs require applicants to provide reasonable assurance that state water quality standards will not be violated.[41] If a stormwater management system is designed in accordance with the stormwater treatment requirements and criteria adopted by the DEP or the WMDs, then the system design is presumed not to cause or contribute to violations of applicable state water quality standards.[42] If a stormwater management system is constructed, operated, and maintained for stormwater treatment in accordance with a valid permit or exemption, then the

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[32] Stormwater can be either a point source or a nonpoint source of pollution. EPA, *Monitoring and Evaluating Nonpoint Source Watershed Projects*, 1-1, *available at* https://www.epa.gov/sites/production/files/2016-02/documents/chapter_1_draft_aug_2014.pdf; DEP, *Nonpoint Source Program Update*, 9 (2015), *available at* https://floridadep.gov/sites/default/files/NPS-ManagementPlan2015.pdf; *See generally* EPA, *NPDES Stormwater Program*, https://www.epa.gov/npdes/npdes-stormwater-program (last visited Jan. 26, 2022).

[33] DEP, *DEP 101: Environmental Resource Permitting*, https://floridadep.gov/comm/press-office/content/dep-101-environmental-resource-permitting (last visited Jan. 26, 2022).

[34] South Florida Water Management District, *Environmental Resource Permits*, https://www.sfwmd.gov/doing-business-with-us/permits/environmental-resource-permits (last visited Jan. 26, 2022).

[35] Fla. Admin. Code R. 62-330.010(3).

[36] Section 373.413, F.S.; *see* s. 403.814(12), F.S.

[37] Section 373.416, F.S.

[38] DEP, *ERP Stormwater*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/erp-stormwater (last visited Jan. 26, 2022).

[39] See generally, EPA, *National Pollutant Discharge Elimination System (NPDES)*, www.epa.gov/npdes/npdes-permit-limits (last visited Jan. 26, 2022).

[40] Fla. Admin. Code R. 62-40.432(2).

[41] Section 373.414(1), F.S.; *see* s. 373.403(11), F.S.; *see* Fla. Admin. Code Ch. 62-4, 62-302, 62-520, and 62-550.

[42] Section 373.4131(3)(b), F.S. Fla. Admin. Code R. 62-40.432(2); *see also* DEP, *ERP Stormwater*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/erp-stormwater (last visited Jan. 27, 2022) (stating that a key component of the stormwater rule is a "rebuttable presumption that discharges from a stormwater management system designed in accordance with the BMP design criteria will not cause harm to water resources").

stormwater discharged from the system is presumed not to cause or contribute to violations of applicable state water quality standards.[43] If an applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the DEP or a WMD must consider mitigation measures that cause a net improvement of the water quality in the waterbody that does not meet the standards.[44]

2020 Stormwater Rulemaking

In 2020, the Florida Legislature passed CS/SB 712, the Clean Waterways Act, to address known sources of nutrient pollution in waterways and to strengthen regulatory requirements.[45] The Clean Waterways Act required the DEP and the WMDs to update stormwater regulations to reflect the latest scientific information. In response, the DEP created the Clean Waterways Act Stormwater Rulemaking Technical Advisory Committee (TAC). The TAC's goal is to develop and provide consensus stormwater rulemaking recommendations for the DEP and the WMDs.[46] The TAC's initial discussion topics were as follows:

- Options for identifying stormwater design criteria and BMPs that are effective for increasing nutrient removal from stormwater runoff;
- Measures for consistent application of the net improvement performance standard to ensure significant reductions of any pollutant loadings to a waterbody thought to be impaired by stormwater runoff; and
- Changes to improve existing stormwater operation regulations to ensure water resources are protected by the rulemaking directed under the Clean Waterways Act.[47]

Water Quality Credit Trading

Water quality credit trading is a market-based approach to water quality improvements that can be used to control pollutants from sources that collectively worsen water quality conditions.[48] Water quality credit trading allows one source of pollution to control a pollutant at levels greater than required and to sell the resulting water quality credits to another source to supplement its level of treatment to comply with pollutant regulations.[49] This practice must result in water quality that is as good as or better than what would be achieved through meeting pollutant level requirements and must not create pollutant hotspots.[50] Water quality credit trades may result in a broad area of water quality improvement, while causing acute or chronic localized effects, or hotpots.[51]

The Florida Statutes provide a framework for water quality credit trading in the state. The DEP is the agency responsible for authorizing water quality credit trading in adopted BMAPs and for

[43] Section 373.4131(3)(c), F.S.
[44] Section 373.414(1)(b)3., F.S.
[45] DEP, *Clean Waterways Act Stormwater Rulemaking Technical Advisory Committee (TAC)*, https://floridadep.gov/CWA-TAC (last visited Feb 1, 2022).
[46] *Id.*
[47] *Id.*
[48] EPA, *Water Quality Trading*, https://www.epa.gov/npdes/water-quality-trading (last visited Jan. 26 2022).
[49] *Id.*
[50] *Id.*
[51] *Id.*

establishing the pollutant load reduction value of water quality credits.[52] The DEP cannot participate in the establishment of water quality credit prices. Water quality credit sellers are responsible for achieving the load reductions on which the water quality credits are based and complying with the terms of the DEP authorization and any trading agreements into which they have entered; buyers are responsible for complying with the terms of the DEP water discharge permit.[53] Land set-asides and land use modification not otherwise required by state law or a permit, including constructed wetlands or other water quality improvement projects, that reduce nutrient loads into impaired surface waters may be used for water quality credit trading.[54] In the past, water quality credits have been traded in the state, however there are no water quality credits available for trade as of January 28, 2022.[55]

Mitigation Banking

Generally, mitigation banking is a practice in which an environmental enhancement and preservation project is conducted by a public agency or private entity to provide mitigation for unavoidable wetland impacts within a defined mitigation service area.[56] The bank is the site itself, and the currency sold by the banker to the impact permittee is a credit, representing the wetland ecological value equivalent to the complete restoration of one acre.[57] The number of potential credits permitted for the bank, and the credit debits required for impact permits, are determined by the permitting agencies.[58]

Creation of a mitigation bank in Florida requires both a permit from the DEP or a WMD, and federal approval of a mitigation bank instrument from several agencies led by the U.S. Army Corps of Engineers (USACE), in a joint state/federal interagency review team.[59] Through this process, depending on agency approval, a mitigation bank may provide mitigation for permittees under both the federal and state permitting programs.

Requirements for permitting mitigation banks differ between mitigation bank instruments issued by the USACE and state permits issued by the DEP or the WMDs. Under the federal process, a mitigation banking instrument serves as the legal document for the establishment, operation, and use of a mitigation bank.[60] They are approved by an interagency review team, through procedures involving public notice and comment.[61] Mitigation banking instruments must include

[52] Section 403.067(8), F.S.
[53] Water quality credit trading must be implemented through permits, including water quality credit trading permits, other authorizations, or other legally binding agreements as establish by DEP rule. *Id.*
[54] *Id.*
[55] DEP, *Florida Water Quality Credit Trading Registry*, https://floridadep.gov/dear/water-quality-restoration/content/florida-water-quality-credit-trading-registry (Jan. 17, 2022); DEP, *Credits Traded Document* (Sept. 7, 2018) *available at* http://publicfiles.dep.state.fl.us/DEAR/DEARweb/BMAP/DEP%20WQCT%20Spreadsheet.pdf (last visited Jan. 27, 2022).
[56] DEP, *Mitigation and Mitigation Banking*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-and-mitigation-banking (last visited Jan. 26, 2022).
[57] *Id*.
[58] *Id*.
[59] DEP, *Mitigation Banking Rule and Procedure Synopsis*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-banking-rule-and (last visited Jan. 26, 2022).
[60] 33 C.F.R. s. 332.2.
[61] 33 C.F.R. s. 332.8; 40 C.F.R. s. 230.98.

certain detailed elements, such as a comprehensive mitigation plan including financial assurances, and a credit release schedule that is tied to the achievement of specific milestones.[62]

Under Florida law, to obtain a mitigation bank permit, the applicant must provide reasonable assurance that the mitigation bank will:

- Improve ecological conditions of the regional watershed;
- Provide viable and sustainable ecological and hydrological functions for the proposed mitigation service area;
- Be effectively managed in perpetuity;
- Not destroy areas with high ecological value;
- Achieve mitigation success; and
- Be adjacent to lands that will not adversely affect the long-term viability of the mitigation bank due to unsuitable land uses or conditions.[63]

The applicant must also provide reasonable assurance that:

- Any surface water management system that will be constructed, altered, operated, maintained, abandoned, or removed within a mitigation bank will meet the requirements of part IV of ch. 373, F.S., which regulates management and storage of surface waters, and rules adopted thereunder;
- The applicant has sufficient legal or equitable interest in the property to ensure perpetual protection and management of the land within a mitigation bank; and
- The applicant can meet the financial responsibility requirements prescribed for mitigation banks.[64]

Graywater, Residential Systems, and Development Incentives

Graywater is the part of domestic sewage that is not carried off by toilets, urinals, and kitchen drains. It includes waste from the bath, lavatory, laundry, and sink, except for kitchen sink waste.[65] Graywater installations occur in both residential and non-residential installations and the capture, treatment, and reuse of graywater yields usable water that would otherwise be directed to the sewer.[66] Reusing graywater also reduces the use of potable water for non-potable needs and conserves fresh water.[67]

The Florida Building Code specifies that graywater may only be used for flushing of toilets and urinals. Any discharge from the building must be connected to a public sewer or an onsite sewage treatment and disposal system in accordance with Department of Health regulations in

[62] *See generally* 33 C.F.R. s. 332.8(d)(6); *see also* 40 C.F.R. s. 230.98(d)(6).
[63] Section 373.4136(1), F.S.
[64] *Id*.; Fla. Admin. Code R. 62-342.400.
[65] Section 381.0065(2)(e), F.S.
[66] Alliance for Water Efficiency, *Graywater Systems*, https://www.allianceforwaterefficiency.org/resources/topic/graywater-systems (last visited Jan. 31, 2022).
[67] Martinez, Christopher J., *Gray Water Reuse in Florida*, University of Florida IFAS Extension, https://edis.ifas.ufl.edu/ae453#:~:text=Gray%20water%20must%20be%20filtered,to%20the%20sanitary%20drainage%20system (last visited Jan. 31, 2022).

chapter 64E-6 of the Florida Administrative Code.[68] Graywater systems in Florida have several requirements: the graywater must be filtered, disinfected, and dyed; and storage reservoirs must have drains and overflow pipes which must be indirectly connected to the sanitary drainage system.[69]

To encourage adoption of residential graywater reuse, states, counties, municipalities, or special districts are required to implement incentives for the use of graywater technologies.[70] To do this, they must authorize the use of residential graywater technologies in their respective jurisdictions and provide specific density or intensity bonuses to developers or homebuilders if a certain percentage of a proposed or existing development will have a graywater system installed.[71]

III. Effect of Proposed Changes:

Section 1 creates s. 373.4134, F.S. to authorize the creation of water quality enhancement areas (WQEAs). The bill lists the following legislative findings:

- Water quality will be improved and adverse water quality impacts of activities regulated under provisions of law relating to the management and storage of surface waters may be offset by WQEAs that provide offsite compensatory treatment;
- An expansion of existing authority for regional treatment to include offsite compensatory treatment in WQEAs to make water quality enhancement credits available for purchase by governmental entities to address impacts regulated by provisions of law relating to the management and storage of surface waters is needed;
- WQEAs will improve the certainty and long-term viability of water quality treatment systems;
- WQEAs are a valuable tool to assist governmental entities in satisfying the net improvement performance standard[72] to ensure significant reductions of pollutant loadings; and
- WQEAs that provide credits to governmental entities seeking permits under this bill and governmental entities seeking to meet an assigned basin management action plan (BMAP) allocation or reasonable assurance plan (RAP) are considered an appropriate and permittable option.

The bill provides the following definitions:

- "Enhancement credit" means a standard unit of measure which represents a quantity of pollutant removed;
- "Governmental entities" means any political subdivision of this state, including any state agency, department, county, municipality, special district, school district, utility authority, or other authority or instrumentality, agency, unit, or department thereof;

[68] 2020 Florida Building Code – Plumbing, Seventh Edition (Dec. 2020), *available at* https://codes.iccsafe.org/content/FLPC2020P1.
[69] *Id*.
[70] Section 403.892(2), F.S.
[71] *Id*.
[72] If the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the governing board or DEP shall consider mitigation measures proposed by or acceptable to the applicant that cause net improvement of the water quality in the receiving body of water for those parameters which do not meet standards. Section 373.414(1)(b)3., F.S.

- "Natural system" means an ecological system supporting aquatic and wetland-dependent natural resources, including fish and aquatic and wetland –dependant wildlife habitats;
- "Water quality enhancement area" means a natural system constructed, operated, managed, and maintained pursuant to a permit issued under this part for the purpose of providing offsite, compensatory, regional treatment within an identified enhancement service area, for which enhancement credits may be provided; and
- "Water quality enhancement area permit" means a permit issued for a WQEA which authorizes its construction, operation, management, and maintenance and the purchase and sale of credits.

The bill provides that the construction, operation, management, and maintenance of a WQEA must be approved through the environmental resource permitting (ERP) process. Department of Environmental Protection (DEP) rules pertaining to ERPs apply to WQEAs and credits. The bill provides that WQEA credits may be sold only to governmental entities seeking to meet an assigned BMAP allocation or reasonable assurance plan or for the purpose of achieving net water quality improvement after the governmental entity has provided reasonable assurance of meeting department rules for design and construction of all onsite stormwater management. It provides that a WQEA must address contributions of pollutants or other constituents for those parameters in an enhancement service area that do not meet state water quality criteria. Further, the bill requires that a WQEA must use, create, or improve natural systems to improve water quality.

The bill allows a governmental entity to use a WQEA for its own water quality needs. However it may not act as a sponsor to construct, operate, manage, maintain, or market credits to third parties. Further, the bill prevents a local government from requiring a permit or otherwise regulating the operation of WQEAs. It provides that the issuance of a WQEA permit does not preclude the responsibility of an applicant to obtain other applicable federal, state, and local permits for the construction activities associated with the WQEA.

To obtain a WQEA permit, the bill directs an applicant to provide reasonable assurances that the proposed WQEA will:

- Meet the requirements for issuance of an ERP;
- Benefit water quality in the enhancement service area;
- Achieve defined performance or success criteria for the reduction of pollutants or other constituents that prevent receiving waters from meeting state water quality criteria;
- Ensure long-term pollutant reduction through effective operation and maintenance in perpetuity by designation of a responsible long-term maintenance entity supported by an endowment or other long-term financial assurance sufficient to assure perpetual operation and maintenance;
- Demonstrate sufficient legal or equitable interest in the property to ensure access and perpetual protection and management of land within the WQEA; and
- Provide for permanent preservation of the site through a conservation easement.

The bill requires a WQEA permit to provide for the assessment, valuation, and award of credits based on units of pollutant removed. It requires the DEP to base its determination of the award of enhancement credits on standard numerical models or analytical tools that establish the WQEAs ability to remove pollutants or constituents.

The bill requires that if a BMAP exists for the watershed in which the WQEA is located, the applicant must use the same numerical models or analytical tools used for the BMAP in WQEA permit application. If a BMAP does not exist for the watershed in which the WQEA is located, the bill provides that the applicant, with the approval of the DEP, may submit as part of the permit application model parameters and results used by the DEP to develop a BMAP for a watershed with similar characteristics and pollutants as that where the WQEA is to be located. The bill requires that if the DEP determines that its numerical model or analytical tool used for a BMAP is not appropriate for the proposed WQEA, the applicant must use a standard numerical model of analytical tool for the WQEA.

It requires a WQEA application to include the following information to assist the DEP in determining credits:

- Rainfall data over the longest period of record available collected from the closest site to the proposed WQEA, preferably within the same drainage basin;
- Anticipated average annual water quality and quantity inflows to the proposed WQEA, based on published local data collected over a period of record that most closely matches the rainfall data;
- Site-specific conditions affecting the anticipated performance of the proposed WQEA, including the proposed treatment type and anticipated associated reduction rates, as demonstrated by the performance of other areas where the treatment type has been established and operating over a minimum of two consecutive wet and dry seasons; and
- Data from collection stations approved by the DEP in sites that the DEP deems sufficient to determine flows and local water quality conditions.

The bill provides that an issuance of a WQEA permit does not preclude the responsibility of an applicant to obtain other applicable federal, state, and local permits for the construction activities associated with the WQEA.

The bill provides that the DEP shall establish a water quality enhancement service area for each WQEA. Enhancement credits may be withdrawn and used only to address adverse impacts in the water quality enhancement service area. The boundaries of the enhancement service area shall depend upon the geographic areas where the enhancement area could reasonably be expected to address adverse impacts. The bill provides that the enhancement service areas may overlap, and enhancement service areas for two or more enhancement areas may be approved for a regional watershed.

The bill provides that an applicant for a WQEA permit must propose a performance and success criteria monitoring and verification plan, with protocols to be implemented once the WQEA and sufficient to demonstrate that the area is meeting defined performance or success criteria for the reduction of pollutants or contaminants for which the credits were awarded by the DEP.

The bill provides that if a permittee fails to comply with the conditions of a WQEA permit, the DEP must revoke the permittee's ability to sell enhancement credits until the WQEA is compliant with the permit conditions.

The bill directs the DEP or the water management districts to authorize the sale and use of credits to governmental entities to offset adverse water quality impacts of activities regulated under the bill or to assist entities seeking to meet an assigned BMAP allocation or RAP. The bill allows an applicant to use water quality improvement projects that use natural systems or land use modifications, including constructed wetlands or minor impoundments that reduce pollutants to a receiving water body, to generate credits if approved by the DEP. The bill provides that a WQEA may not be located on lands purchased for conservation thorough the Florida Forever Act or Florida Preservation 2000 Act. The bill directs the DEP to provide for and maintain a ledger that tracks the award, release, and use of credits. In furtherance of the ledger requirement, the bill directs a WQEA operator to notify the DEP of the amount of credits sold or used within 30 days of the date the credits transaction is completed. It also directs a water management district that authorizes credit use to report to the DEP the amount of credits used by an applicant.

The bill provides that reductions in pollutant loading required under any state regulatory program are not eligible to be considered as credits. It specifies that credits may not be used by point source dischargers to satisfy regulatory requirements other than those necessary to obtain an ERP for construction and operation of the surface water management system of the site. The bill provides that use of credits is voluntary, and any landowner, discharger, or other responsible person implementing applicable management strategies specified in a BMAP or RAP may not be required to use credits to reduce pollutant loads to achieve pollutant reductions. Further, the bill provides that a local government may not deny the use of credits due to the location of the WQEA outside the jurisdiction of the local government.

The bill provides that notwithstanding any other provision of law, nothing in this section may be construed to limit or restrict the authority of the DEP to deny use of enhancement credits when the DEP is not reasonably assured that the use of the credits will not cause or contribute to a violation of water quality standards, even if the project being implemented by the governmental entity is within the enhancement service area. If the DEP receives a request for the use of enhancement credits and the DEP determines that their use will not cause or contribute to a violation of water quality standards, the DEP my allow their use

The bill provides that the authority granted to the DEP by this bill is supplemental to the authority granted under the statutes regulating water quality credit trading. It authorizes the DEP to adopt rules to implement WQEAs and provides that this section may not be implemented until the DEP adopts such rules.

Section 2 amends s. 403.892, F.S., to add to a condition to qualify for graywater technology use incentives that each residence forming part of a multifamily project must be serviced by its own residential graywater system or a master graywater collection and re-use system for the entire project. The bill also clarifies that the maintenance of the graywater system is the responsibility of the owner. The bill provides that apartments may be included in a proposed or existing development as one of the conditions met to qualify for incentives for the use of graywater technologies and clarifies that whether a dwelling is occupied by an owner is not an eligibility criterion for a developer or homebuilder to receive incentives. The bill provides that an operation and maintenance manual will be supplied to either the initial owner of the residence or the initial owner of a multifamily project that will be serviced by a master graywater collection and reuse system. The bill also corrects a reference.

Section 3 directs the DEP to adopt and modify rules relating to mitigation banks and activities in surface waters and wetlands to ensure that required financial assurances are equivalent and sufficient to provide for the long-term management of mitigation measures. The bill requires the DEP, in consultation with the water management districts, to include this required rulemaking in existing active rulemaking or to complete rule development by June 30, 2023.

Section 4 provides that the bill will take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Local governments may experience a negative fiscal impact from loss of permit application fees for stormwater treatment due to the bill preventing local governments from requiring water quality treatment to be located within their jurisdiction.[73] Other fiscal effects are indeterminate.

[73] DEP, *House Bill 965 Legislative Analysis* (Jan. 7, 2022) (on file with the Senate Committee on Environment and Natural Resources).

The state government may experience revenue increases from WQEA permit application fees. These fees would be based on acreage and would likely range from $420 to $14,000. The number of applicants is unknown. The new permit application fees would be deposited into the Permit Fee Trust Fund.[74]

According to the Department of Environmental Protection (DEP), it would incur costs from operating the WQEA program, because it would need eight additional staff members and associated travel. The total financial impact for these positions including salaries, benefits, expenses, and travel costs would be approximately $878,275 annually.[75]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Environmental Protection has identified numerous issues, as provided in its analysis.[76]

VIII. Statutes Affected:

This bill creates section 373.4134 of the Florida Statutes.

This bill substantially amends section 403.892 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on February 28, 2022:
The committee substitute:

- Removes definitions for "enhancement service area" and "planning unit" from the underlying bill.
- Adds definition for "natural system".
- Adds that the DEP must use standard numerical models that establish a WQEA's ability to remove pollutants in its determination of the award of credits. The models may be based on basin management action plan (BMAP) numerical models for the watershed where the WQEA is located, a similar numerical model if no BMAP exists for a particular watershed, or a standard numerical model if a similar model is not appropriate.
- Removes from the underlying bill the provision that an enhancement service area must be based on a BMAP, reasonable assurance plan, or planning unit.

[74] *Id.*
[75] *Id.*
[76] *Id.*

- Clarifies what governmental entities and under what circumstances water quality enhancement credits can be sold to governmental entities.
- Clarifies the areas in which a water quality enhancement area may be used to address pollutants.
- Requires a WQEA permit applicant to propose a performance and success criteria monitoring and verification plan.
- Requires the DEP to revoke a permittee's ability to sell enhancement credits if the permittee fails to comply with WQEA permit conditions until the WQEA is in compliance.
- Removes exceptions in the underlying bill that would allow a WQEA to provide credits outside of an enhancement service area.
- Adds that before approving the use of enhancement credits, the DEP or water management district must determine that the enhancement credits are appropriate for a specific permit use.
- Creates a water quality enhancement service area for each water quality enhancement area.
- Adds that WQEAs may not be located on lands purchased for conservation pursuant to the Florida Forever Act or the Florida Preservation 2000 Act.
- Provides that the DEP may not implement WQEA provisions until rules are adopted.

Provides that apartments may be included in a proposed or existing development as one of the conditions met to qualify for incentives for the use of graywater technologies.

- Provides that an operation and maintenance manual will be supplied to either the initial owner of the residence or the initial owner of a multifamily project that will be serviced by a master graywater collection and reuse system.
- Removes the section in the underlying bill authorizing the DEP to enter into agreements and contracts with public and private entities to accept and expand donations, grants of funds, and payments to expedite the evaluation of the entity's application for a dredge and fill permit or an environmental resource permit.
- Deletes the $2.04 million appropriation for 24 full-time equivalent positions in the underlying bill.

CS by Environment and Natural Resources on February 1, 2022:

The committee substitute:

- Specifies that only governmental entities may purchase and use water quality enhancement (WQEA) credits.
- Defines "governmental entity" as any political subdivision of the state, including any state agency, department, county, municipality, special district, school district, utility authority, or other authority or instrumentality, agency, unit, or department thereof.
- Removes the prohibition against water quality enhancement credits being used to compensate for wetland or other surface water impacts.
- Deletes the exception that allows water quality enhancement credit use outside of the enhancement service area for projects with total adverse impacts of less than one acre.
- Adds that DEP may enter into agreements and contracts with public or private entities to accept and expend donations, grants, and payments to expedite the evaluation of the entity's application for dredge and fill or environmental resource permits.

- Amends a condition to qualify for incentives for the use of graywater technologies to add that each residence that is part of a multifamily project will be serviced by either its own residential graywater system or a master graywater collection and reuse system for the entire project.
- Directs DEP to adopt and modify rules relating to mitigation banks and activities in surface waters and wetlands to ensure that required financial assurances are equivalent and sufficient to provide for the long-term management of mitigation measures.
- Appropriates $2.04 million in recurring funds, effective July 1, 2022, from the Grants and Donations Trust Fund to DEP and authorizes 24 full-time positions to evaluate dredge and fill and environmental resource permits for entities with which DEP has entered into agreements or contracts.

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 Environment and Natural Resources; and Senator Burgess

592-02535-22 20221426c1

A bill to be entitled

An act relating to environmental management; creating s. 373.4134, F.S.; providing legislative findings and intent; defining terms; providing for water quality enhancement areas, enhancement service areas, and enhancement credits; providing requirements for water quality enhancement area permits, enhancement service areas, and enhancement credits; directing the Department of Environmental Protection and water management districts to authorize the sale and use of enhancement credits to offset certain adverse water quality impacts and to meet certain water quality requirements; providing construction; requiring the department to maintain enhancement credit ledgers; authorizing the department to adopt rules; amending s. 403.061, F.S.; authorizing the department to enter into agreements and contracts with public and private entities for donations, funds, and payments to expedite the evaluation of environmental resource and dredge and fill permits; providing requirements for such agreements and contracts and permit evaluations; requiring the department to make such agreements and contracts publicly available on its website; amending s. 403.892, F.S.; correcting a cross-reference; revising the conditions that a developer or homebuilder must certify it meets as part of its application for development approval or amendment of a development order; providing applicability; requiring the department to adopt or modify specified rules, as

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

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applicable; providing requirements for such rulemaking; providing an appropriation and authorizing full-time equivalent positions; authorizing the department to increase the maximum rate of basic pay for certain positions by up to a specified percentage; providing an effective date.

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

Section 1. Section 373.4134, Florida Statutes, is created to read:

373.4134 Water quality enhancement areas.—

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

(a) Water quality will be improved and adverse water quality impacts of activities regulated under this part may be offset by the construction, operation, maintenance, and long-term management of water quality enhancement areas that provide offsite compensatory treatment.

(b) An expansion of existing authority for regional treatment to include offsite compensatory treatment in water quality enhancement areas to make credits available for purchase by governmental entities to offset impacts regulated under this part is needed.

(c) The construction, operation, maintenance, and long-term management of water quality enhancement areas pursuant to this section will improve the certainty and long-term viability of water quality treatment systems.

(d) Water quality enhancement areas are a valuable tool to

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

assist governmental entities in satisfying the net improvement performance standard pursuant to s. 373.414(1)(b)3. to ensure significant reductions of pollutant loadings.

(e) Water quality enhancement areas that provide water quality enhancement credits to governmental entities seeking permits under this part and to governmental entities seeking to meet an assigned basin management action plan allocation or reasonable assurance plan pursuant to s. 403.067 are considered an appropriate and permittable option.

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

(a) "Enhancement credit" means a standard unit of measure which represents a quantity of pollutant removed.

(b) "Enhancement service area" means the geographic area where the water quality enhancement area can reasonably be expected to offset adverse water quality impacts.

(c) "Governmental entity" means any political subdivision of this state, including any state agency, department, county, municipality, special district, school district, utility authority, or other authority or instrumentality, agency, unit, or department thereof.

(d) "Planning unit" means the total maximum daily load planning unit that is an individual tributary basin or a group of smaller adjacent tributary basins with similar characteristics.

(e) "Water quality enhancement area" means a natural system constructed, operated, managed, and maintained pursuant to a permit issued under this section for the purpose of providing offsite, compensatory, regional treatment within an identified enhancement service area, for which enhancement credits may be

provided.

(f) "Water quality enhancement area permit" means a permit issued for a water quality enhancement area which authorizes the construction, operation, management, and maintenance of the area and the purchase and sale of enhancement credits.

(3) WATER QUALITY ENHANCEMENT AREAS.—

(a) The construction, operation, management, and maintenance of a water quality enhancement area must be approved through the environmental resource permitting process. Department rules pertaining to environmental resource permits apply to water quality enhancement areas and enhancement credits.

(b) Water quality enhancement credits may be sold only to governmental entities.

(c) A water quality enhancement area must address contributions of pollutants for those parameters in an enhancement service area which do not meet state water quality standards.

(d) A water quality enhancement area must use, create, or improve natural systems in order to improve water quality.

(e) A governmental entity may use a water quality enhancement area for its own water quality needs. However, a governmental entity may not act as a sponsor to construct, operate, manage, maintain, or market enhancement credits to third parties.

(f) A local government may not require a permit or otherwise impose regulations governing the operation of a water quality enhancement area.

(4) WATER QUALITY ENHANCEMENT AREA PERMIT.—

(a) To obtain a water quality enhancement area permit, the applicant must provide reasonable assurances that the proposed water quality enhancement area will:

1. Meet the requirements for issuance of an environmental resource permit.

2. Benefit water quality in the enhancement service area.

3. Achieve defined performance or success criteria for the reduction of pollutants or other constituents that prevent receiving waters from meeting state water quality standards.

4. Assure long-term pollutant reduction through effective operation and maintenance in perpetuity by designation of a responsible long-term maintenance entity supported by an endowment or other long-term financial assurance sufficient to assure perpetual maintenance.

5. Demonstrate sufficient legal or equitable interest in the property to ensure access and perpetual protection and management of the land within the water quality enhancement area.

6. Provide for permanent preservation of the site pursuant to s. 704.06.

(b) The water quality enhancement area permit must provide for the assessment, valuation, and award of credits based on units of pollutant removed. To assist the department in determining enhancement credits, a water quality enhancement area application must include the following information:

1. Rainfall data over the longest period of record available, collected from the closest site to the proposed water quality enhancement area, preferably within the same drainage basin.

2. Anticipated average annual water quality and quantity inflows to the proposed water quality enhancement area, based on published local data collected over a period of record that most closely matches the rainfall data under this paragraph.

3. Site-specific conditions affecting the anticipated performance of the proposed water quality enhancement area, including the proposed treatment type and anticipated associated reduction rates, as demonstrated by the performance of other areas where the treatment type has been established and operating over a minimum of two consecutive wet and dry seasons.

4. Data from collection stations approved in advance by the department in sites that the department deems sufficient to determine flows and local water quality conditions.

(c) The issuance of a water quality enhancement area permit under this section does not preclude the responsibility of an applicant to obtain other applicable federal, state, and local permits for the construction activities associated with the water quality enhancement area.

(5) ENHANCEMENT SERVICE AREA.—

(a) An enhancement service area must be based on a basin management action plan or reasonable assurance plan boundary adopted by the department. If the department does not adopt a basin management action plan or reasonable assurance plan boundary, the enhancement service area must be the planning unit.

(b) A water quality enhancement area may provide enhancement credits only in an enhancement service area, except for:

1. Projects with adverse impacts located partially within

the enhancement service area.

2. Linear projects, such as roadways, transmission lines, distribution lines, pipelines, railways, or seaports listed in s. 311.09(1).

(c) Once an enhancement service area has been established by the department, the enhancement service area must be accepted by all water management districts and local governments.

(6) ENHANCEMENT CREDITS.—

(a) The department or water management district shall authorize the sale and use of enhancement credits to governmental entities to offset adverse water quality impacts of activities regulated under this part or to assist governmental entities seeking to meet an assigned basin management action plan allocation or reasonable assurance plan pursuant to s. 403.067.

(b) Water quality improvement projects using natural systems or land use modifications, including, but not limited to, constructed wetlands or minor impoundments that reduce pollutants to a receiving water body, may be used by an applicant to generate enhancement credits if approved by the department.

(c) The department shall provide for and maintain a ledger that tracks the award, release, and use of enhancement credits.

1. The operator of a water quality enhancement area shall notify the department of the amount of enhancement credits sold or used within 30 days of the date the enhancement credit transaction is completed.

2. A water management district that authorizes applicants seeking permits under this part to use enhancement credits to

offset water quality impacts must report to the department the amount of enhancement credits used by the applicant.

(d) Reductions in pollutant loading required under any state regulatory program are not eligible to be considered as enhancement credits.

(e) Enhancement credits may not be used by point source dischargers to satisfy regulatory requirements other than those necessary to obtain an environmental resource permit for construction and operation of the surface water management system of the site.

(f) Use of enhancement credits made available by water quality enhancement areas is voluntary.

(g) Any landowner, discharger, or other responsible person regulated under this part or s. 403.067 implementing applicable management strategies specified in an adopted basin management action plan or reasonable assurance plan may not be required by any permit or other enforcement action to use enhancement credits to reduce pollutant loads to achieve the pollutant reductions established pursuant to s. 403.067.

(h) A local government may not deny the use of enhancement credits due to the location of the water quality enhancement area outside the jurisdiction of the local government.

(7) AUTHORITY.—The authority granted to the department under this section is supplemental to the authority granted under s. 403.067(8).

(8) RULES.—The department may adopt rules to implement this section.

Section 2. Subsection (22) of section 403.061, Florida Statutes, is amended to read:

403.061 Department; powers and duties.—The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to:

(22)(a) Advise, consult, cooperate, and enter into agreements and contracts with other agencies of the state, the Federal Government, other states, interstate agencies, groups, political subdivisions, and industries affected by the provisions of this act, rules, or policies of the department. However, the secretary of the department shall not enter into any interstate agreement relating to the transport of ozone precursor pollutants, nor modify its rules based upon a recommendation from the Ozone Transport Assessment Group or any other such organization that is not an official subdivision of the United States Environmental Protection Agency but which studies issues related to the transport of ozone precursor pollutants, without prior review and specific legislative approval.

(b) Enter into agreements and contracts with public or private entities to accept and expend donations, grants of funds, and payments to expedite the evaluation of the entity's application for a permit under s. 373.4131 or s. 373.4146. Such agreements and contracts must be effective for at least 3 years. Permit evaluations under this paragraph must follow the same permit application evaluation procedures as those for an entity that does not have an agreement or a contract with the department. The department shall ensure that agreements and contracts entered into under this paragraph do not substantively or procedurally affect the impartial evaluation of the entity's

permit application. Such active agreements and contracts must be posted on the department's website.

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Section 3. Paragraph (b) of subsection (1) and paragraphs (a), (b), and (d) of subsection (3) of section 403.892, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

403.892 Incentives for the use of graywater technologies.—

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

(b) "Graywater" has the same meaning as in s. 381.0065(2)(f) ~~s. 381.0065(2)(c)~~.

(3) To qualify for the incentives under subsection (2), the developer or homebuilder must certify to the applicable governmental entity as part of its application for development approval or amendment of a development order that all of the following conditions are met:

(a) The proposed or existing development has at least 25 single-family residential homes that are either detached or multifamily dwellings. ~~This paragraph does not apply to multifamily projects over five stories in height.~~

(b) Each single-family residential home or residence will have its own residential graywater system ~~that is~~ dedicated for its use. Each residence forming part of a multifamily project will be serviced by either its own residential graywater system dedicated for its use or a master graywater collection and reuse

system for the entire project.

(d) The required maintenance of the graywater system will be the responsibility of the owner ~~residential homeowner~~.

(6) This section does not apply to multifamily projects more than five stories in height. Whether a dwelling is occupied by an owner is not an eligibility criterion for a developer or homebuilder to receive the incentives authorized pursuant to this section.

Section 4. The Department of Environmental Protection shall adopt and modify rules adopted pursuant to ss. 373.4136 and 373.414, Florida Statutes, to ensure that required financial assurances are equivalent and sufficient to provide for the long-term management of mitigation permitted under ss. 373.4136 and 373.414, Florida Statutes. The department, in consultation with the water management districts, shall include the rulemaking required by this section in existing active rulemaking or shall complete rule development by June 30, 2023.

Section 5. Effective July 1, 2022, the sum of $2.04 million in recurring funds from the Grants and Donations Trust Fund is appropriated to the Department of Environmental Protection, and 24 full-time equivalent positions are authorized, to evaluate applications for permits issued under ss. 373.4131 and 373.4146, Florida Statutes, for entities with which the department has entered into agreements or contracts under s. 403.061(22), Florida Statutes. To obtain and retain such positions, the department may increase the maximum rate of basic pay up to 30 percent for each position.

Section 6. This act shall take effect upon becoming a law.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 21, 2022

I respectfully request that **Senate Bill #1426**, relating to Environmental Management, 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

APPEARANCE RECORD

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

2/28/22
Meeting Date

Appropriations Com.
Committee

1426
Bill Number or Topic

897990
Amendment Barcode (if applicable)

Name Frank Bernardino

Phone (561) 718-2345

Address 201 West Park Ave, Suite 100
Street

Email frank@anfieldflorida.com

Tallahassee Florida 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Polk 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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2/28/22
Meeting Date

Appropriations
Committee

1426
Bill Number or Topic

Amendment Barcode (if applicable)

Name Frank Bernardino

Phone 561 / 718-2345

Address 201 West Park Ave, Suite 100
Street

Email frank@canfieldflorida.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:
Polk County

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S-001 (08/10/2021)

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

THE FLORIDA SENATE

APPEARANCE RECORD

28 Feb 2022
Meeting Date

1426
Bill Number (if applicable)

Topic Environmental Management

Amendment Barcode (if applicable)

Name Edgar G. Fernandez

Job Title

Address 201 W Park Ave Ste 100
Street

Phone (866) 960-3939

Tallahassee FL 32301
City *State* *Zip*

Email Edgar.Arf@Arfflorida.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Water Advocates

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

The Florida Senate

APPEARANCE RECORD

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2/28/2022
Meeting Date

Appropriations
Committee

1426
Bill Number or Topic

Amendment Barcode (if applicable)

Name David Rathke

Phone 352/584-6804

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Street

Tallahassee FL 32311
City State Zip

Email execdir@Resiliency Florida.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: Resiliency Florida

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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February 28, 2022
Meeting Date

Senate Appropriations
Committee

1426 (adverse water quality impacts)
Bill Number or Topic

Amendment Barcode (if applicable)

Name Susan Aertker for League of Women Voters-Florida

Phone 904-262-5124

Address (Susan Aertker) 10178 Foxcroft Rd W
Street

Email susaninflorida@gmail.com

Jacksonville FI 32257
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: League of Women Voters-Florida

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

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

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

S-001 (08/10/2021)

The Florida Senate

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 Appropriations

BILL:	SB 1476
INTRODUCER:	Senator Wright
SUBJECT:	Prescription Drug Coverage
DATE:	February 25, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Favorable**
2.	Sanders	Betta	AEG	**Recommend: Favorable**
3.	Sanders	Sadberry	AP	**Favorable**

I. Summary:

SB 1476 revises provisions of the Florida Insurance Code (code) relating to the oversight of pharmacy benefit managers (PBMs) by the Office of Insurance Regulation (OIR). Specifically, the bill:

- Authorizes the OIR to conduct market conduct examinations of PBMs to determine compliance with applicable provisions of the code;
- Requires a health insurer or health maintenance organizations (HMO), and any entity acting on their behalf, including a PBM, to comply with the pharmacy audit provisions;
- Authorizes an audited pharmacy to appeal certain final audit findings made by health insurers or HMO, or PBM acting on their behalf; and
- Provides a person who fails to register with the OIR while operating as a PBM is subject to a $10,000 fine for each violation.

The bill has an indeterminate, yet negative impact to state revenue and expenditures. The OIR estimates contracting with a pharmacist to provide oversight of PBM market conduct examinations and respond to complaints involving pharmacy audits will cost $125,000 to $200,000 annually.

The Division of State Group Insurance program may experience an indeterminate, yet negative fiscal impact relating to administrative costs of any market conduct examination of its PBM by the OIR. To the extent such examination occurs, such costs are passed down to participants of the program.

The bill is effective July 1, 2022.

II. Present Situation:

National Health Care Expenditures in 2020[1]

Health care spending in the United States increased 9.7 percent to reach $4.1 trillion in 2020, a much faster rate than the 4.3 percent increase experienced in 2019. Gross Domestic Product declined 2.2 percent in 2020, leading to a sharp increase in the share of the overall economy related to health care spending—from 17.6 percent in 2019 to 19.7 percent in 2020. The acceleration in national health spending in 2020 was primarily due to a 36.0 percent increase in federal expenditures for health care that occurred largely in response to the COVID-19 pandemic.

In regards to retail prescription drugs, spending increased 3.0 percent to $348.4 billion in 2020, a slower rate than in 2019 when spending increased 4.3 percent. The slowdown was a result of a 4.2 percent decline in out-of-pocket expenditures, which resulted from slower overall utilization and an increased use of coupons, which lowers point-of-sale expenditures for consumers.

The Prescription Drug Supply Chain

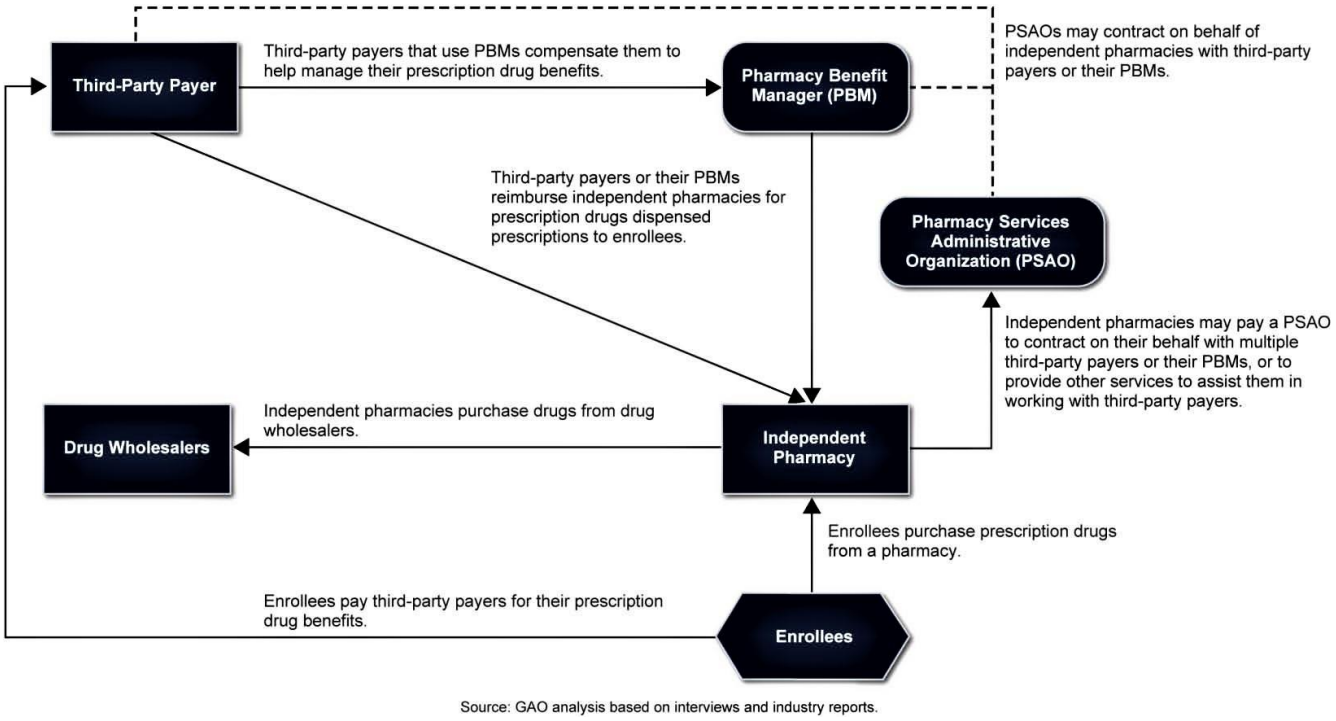
In recent years, the affordability of prescription drugs has gained attention, resulting in pharmacy benefit managers (PBMs) and drug manufacturers coming under scrutiny as policymakers have attempted to understand their role in the drug supply chain. Many stakeholders (drug manufacturers, drug wholesalers, pharmacy services administrative organizations, pharmacy benefit managers, health plans, employers, and consumers) are involved with, and pay different prices for, prescription drugs as they move from the drug manufacturer to the insured.

Due to a lack of transparency in the marketplace, it can be difficult to determine the final price of a prescription drug. The final price of a drug may include rebates and discounts to insurers, health maintenance organizations (HMOs), or pharmacy benefit managers that are not disclosed.[2] Market participants, such as drug wholesalers, may add their own markups and fees, and drug manufacturers may offer direct consumer discounts, such as prescription drug coupons that can be redeemed when filling a particular prescription at a pharmacy.[3]

Some independent pharmacies may contract with pharmacy services administrative organizations (PSAO) to interact on their behalf with other stakeholders, such as drug wholesalers and third-party payers, such as large private and public health plans and their PBMs.[4] The PSAOs develop networks of pharmacies by signing contractual agreements with each pharmacy that authorizes them to negotiate with third-party payers on the pharmacy's behalf. Drug wholesalers and independent pharmacy cooperatives owned the majority of PSAOs in operation in 2011 or 2012.[5] Health insurers, HMOs, or self-insured employers may contract with PBMs to manage their

[1] Centers for Medicare and Medicaid Services, *National Health Expenditure 2020 Highlights,* https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsHistorical (last visited Jan. 28, 2022).
[2] *Annu. Rev. Public Health. 1999. 20:361–401.*
[3] Reynolds, Ian, *et. al., The Prescription Drug Landscape, Explored (Mar. 2019).* The Pew Charitable Trusts.
[4] General Accounting Office, *The Number, Role, and Ownership of Pharmacy Services Administrative Organizations* (GAO-13-176) (Feb 28, 2013), https://www.gao.gov/products/GAO-13-176 (last visited Jan. 28, 2022).
[5] *Id.*

prescription drug benefits. The interaction among key entities involved in the distribution and payment of prescription drugs is depicted below:[6]



Source: GAO analysis based on interviews and industry reports.

A Study of 15 Large Employer Plans[7]

In response to concerns about rising drug costs, a recent study evaluated drug utilization from plan sponsors to estimate savings from reducing the use of high cost, low-value drugs and described some of the cost concerns and challenges relating to the drug supply chain, as follows:

> PBMs negotiate with pharmaceutical manufacturers for price discounts, which are typically paid as rebates based on sales volumes driven by formulary placement. Rebates can reduce the final net price to the plan sponsor and may be passed on to patients. However, in exchange for low administration fees, plan sponsors allow PBMs to keep a portion of the negotiated rebates and other fees. Contracts between PBMs and plan sponsors contain rebate guarantees, perpetuating the demand for high-rebate drugs by encouraging PBMs to maximize rebate revenue, giving preference to some drugs over others on formularies based on rebate revenue rather than their value and final cost to the patient or plan sponsor. Additionally, PBMs earn revenue from "spread" pricing, which is the difference between what PBMs pay pharmacies on behalf of plan sponsors

[6] *Id.*
[7] Vela, Lauren, *Reducing Wasteful Spending in Employers' Pharmacy Benefit Plans* (Aug. 2019) the Commonwealth Fund, https://www.commonwealthfund.org/publications/issue-briefs/2019/aug/reducing-wasteful-spending-employers-pharmacy-benefit-plans (last viewed Jan. 28, 2022).

> and what PBMs are reimbursed by the plan sponsor. This also encourages PBMs to prioritize higher-cost drugs to allow for a larger spread.

The report further describes additional factors that may increase costs for employers and insureds:

> [P]lan sponsors often allow broad formularies that include wasteful drugs because they are concerned that employees will be disappointed if their prescribed drugs are not covered. Doctors prescribe these drugs because they are often unaware of drug costs. Pharmaceutical manufacturers contribute to these patterns by promoting their products through "detailers" — pharmaceutical salespeople calling on doctors — when less costly alternatives may be clinically appropriate for patients. Plan sponsors have addressed the resulting high spending by increasing patient cost-sharing on lower-value drugs. Manufacturers counteract cost-sharing and formulary management tools by flooding the market with copayment coupons that undermine the benefit structure put in place by plan sponsors.[8]

Pharmacy Benefit Managers

Many public and private employers and health plans contract with PBMs to help manage drug costs.[9] Some of the services provided by the PBMs include processing pharmacy claims; providing mail-order pharmacy services to their customers; negotiating rebates (discounts paid by a drug manufacturer to a PBM), developing pharmacy networks, creating drug formularies; reviewing drug utilization; and providing disease management.[10] Generally, a contract between a PBM and a health plan or an employer specifies the amount a plan or an employer will pay a PBM for brand name and generic drugs and specify certain savings guarantees.[11] A recent report found that PBMs passed through 78 percent of manufacturer rebates to health plans in 2012 and 91 percent in 2016.[12] For the same period, the report noted manufacturer rebates grew from $39.7 billion to $89.5 billion, and played a growing role in partially offsetting increases in list prices, which the study noted have risen more quickly than overall retail prescription drug spending.[13]

In recent years, significant consolidations in the PBM industry have occurred. Further, many health insurers are acquiring PBMs. Many entities have cited reducing drug cost as a factor for many of the acquisitions.[14] In 2020, three PBMs, CVS Health (including Caremark and Aetna),

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[8] *Id.*
[9] Commonwealth Fund, *Pharmacy Benefit Managers and Their Role in Drug Spending* (Apr. 22. 2019), https://www.commonwealthfund.org/publications/explainer/2019/apr/pharmacy-benefit-managers-and-their-role-drug-spending (last visited Jan. 28, 2022).
[10] *Id.*
[11] *Policy Options To Help Self-Insured Employers Improve PBM Contracting Efficiency*, Health Affairs Blog, (May 29, 2019). DOI: 10.1377/hblog20190529.43197.
[12] *Supra* note 3.
[13] *Id.*
[14] Barlas, Stephen, Vertical Integration Heats Up in Drug Industry: Will Medication Price Hikes Cool Down as a Result? *P & T: a peer-reviewed journal for formulary management* vol. 43,1 (2018): 31-39.

the Express Scripts business of Cigna, and the OptumRx business of the Unitedhealth Group, were estimated to process about 77 percent of all equivalent prescription claims.[15] The remaining estimated 22 percent was processed by Humana Pharmacy Solutions (eight percent), Medimpact Healthcare Systems (six percent), Prime Therapeutics (four percent), and all other PBMs and cash pay (four percent). In 2018, three PBMs processed about 76 percent of all equivalent prescription claims: CVS Health (including Caremark and Aetna), Express Scripts, and OptumRx (UnitedHealth). [16]

Reimbursement of Pharmacies by PBMs

Generally, the maximum allowable cost (MAC) price represents the upper limit price a plan will pay or reimburse for generic drugs and sometimes brand drugs that have generic versions available (multisource brands).[17] A PBM can maintain multiple MAC lists, each tied to the requirements of a particular employee benefit plan or other payer.[18] A MAC pricing list is a cost management tool that is developed from a proprietary survey of wholesale prices existing in the marketplace, taking into account market share, inventory, reasonable profit margins, and other factors.[19] One of the goals of the MAC pricing list is to ensure the pharmacy or their buying groups are motivated to seek and purchase generic drugs at the lowest price.[20] If a pharmacy procures a higher-priced product, the pharmacy may not make as much profit or, in some instances, may lose money on that specific purchase.[21]

Retail Pharmacies

Independent pharmacies are a type of retail pharmacy with a physical store location—often in rural and underserved areas—that dispense medications to consumers, including both prescription and over-the-counter drugs. [22] Nationwide, the number of independent pharmacies in the United States continues to decline. In 2010, there were 23,106 independent pharmacies; by 2017, that number had dropped to 21,909.[23] As of June 2021, there were 19,397 independent pharmacies.[24]

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[15]Drug Channels, Drug Channels: The Top Pharmacy Benefit Managers of 2020: Vertical Integration Drives Consolidation (Apr. 6, 2021) (last visited Jan. 7, 2022).
[16] Drug Channels, CVS, Express Scripts, and the Evolution of the PBM Business Model (May 29, 2019) at https://www.drugchannels.net/2019/05/cvs-express-scripts-and-evolution-of.html (last visited Jan. 28, 2022).
[17] Academy of Managed Care Pharmacy, Maximum Allowable Cost (MAC) Pricing (Oct. 28, 2021), https://www.amcp.org/policy-advocacy/policy-advocacy-focus-areas/where-we-stand-position-statements/maximum-allowable-cost-mac-pricing (last visited Jan. 28, 2022).
[18] Hyman, David, *The Unintended Consequences of Restrictions on the Use of Maximum Allowable Cost Programs ("MACs") for Pharmacy Reimbursement* (Apr. 2015), at https://www.pcmanet.org/wp-content/uploads/2016/08/hyman-mac-white-paper-april-2015.pdf (last visited Jan. 29, 2022)
[19] *Id.*
[20] *Supra* note 17.
[21] *Id.*
[22] Arnold, Karen, *Independent Pharmacies: Not Dead Yet,* (Jan. 12, 2019, vol. 163, issue 1) Drug Topics, Voice of the Pharmacist, https://www.drugtopics.com/view/independent-pharmacies-not-dead-yet (last visited Jan. 28, 2022).
[23] *Id.*
[24] Chain Drug Review, NCPA releases 2021 NCPA Digest Report (Oct. 11, 2021) NCPA releases 2021 NCPA Digest report - CDR – Chain Drug Review (last visited Jan. 28, 2022). The store count in previous years' Digest reports was based on an NCPA analysis of NCPDP data and NCPA research, which most recently produced a store count of 21,683 in 2019.

The decision of employers, HMOs, or insurers to contract with PBMs may shift business away from smaller, local retail pharmacies that are also known as independent pharmacies. Historically, independent pharmacies were important health care providers in their communities and their pharmacists had long-term relationships with their patients.[25] However, many independent pharmacies have closed in recent years because of the competition resulting from the proliferation of large, chain retail pharmacies[26] that can negotiate with PBMs at deeply discounted reimbursement levels based on large volume sales.

Further, innovations and greater competition in the pharmacy marketplace are occurring. In 2018, Amazon acquired PillPack, a mail-order pharmacy, which has pharmacy licenses in all 50 states.[27] Further, many digital pharmacies are entering the marketplace and focus on certain strategies, such as:

- Home delivery of individual prescriptions;
- Operating at least one brick-and mortar retail location (so that the pharmacy can remain in a PBM's network);
- Dispensing 30-day prescriptions, not 90-day maintenance prescriptions;
- Offering a mobile application so consumers can manage their account, order prescription refills, and schedule delivery; and
- Providing telehealth consultations with prescribers.[28]

Federal Oversight of Health Insurance

On March 23, 2010, the Patient Protection and Affordable Care Act (PPACA) was signed into law.[29] Among its significant changes to the U.S. health insurance system are requirements for health insurers to make coverage available to all individuals and employers, without exclusions for preexisting medical conditions and without basing premiums on any health-related factors. [30] The PPACA imposes many other requirements on qualified health plans offered by individual and group plans, including required benefits, reporting of medical loss ratios, and internal and external appeals of adverse benefit determinations.[31]

Medical Loss Ratios, Rebates, and Spread Pricing

If an insurer or HMO spends less than 80 percent in the individual or small group market (85 percent in the large group market) of premium dollar on medical care and efforts to improve the quality of care, the HMO or insurer must refund the portion of premium that exceeds this

[25] Independent pharmacies are a type of retail pharmacy with a store-based location—often in rural and underserved areas—that dispense medications to consumers, including both prescription and over-the-counter drugs. *See supra* note 4. (last visited Feb. 1, 2022).
[26] Such as Walmart, CVS, Walgreens, or Publix.
[27] Garcia, Ahiz, *Amazon rolls out "Amazon Pharmacy" branding to PillPack*, CNN Business (Nov. 15, 2019), *https://www.cnn.com/2019/11/15/tech/amazon-pharmacy-pillpack/index.html* (last visited Jan. 22, 2022).
[28] Drug Channels, *The Promise and Limits of Digital Pharmacies* (Feb. 16, 2021) at https://www.drugchannels.net/2021/02/the-promise-and-limits-of-digital.html (last visited Feb. 28, 2022).
[29] Pub. L. 111–148 was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the PPACA, was enacted on March 30, 2010. The two laws are collectively referred to as the ''Patient Protection and Affordable Care Act.''
[30] Most of the insurance regulatory provisions in PPACA amend Title XXVII of the Public Health Service Act (PHSA), (42 U.S.C. s. 300gg et seq.).
[31] *Id*.

limit.[32] The 80 percent (or 85 percent) is the medical loss ratio[33] (MLR). The PBMs must report rebate information to the health insurers and HMOs, and the insurer or HMO includes this information as a deduction from the amount of incurred claims in the MLR reporting to the Department of Health and Human Services (HHS).[34]

Insurer Reporting of Health Plan Spending on Drugs

Beginning in 2021, federal law requires a group health plan or health insurance issuer offering group or individual health insurance coverage to report to the Secretary of the Department of Labor and the Secretary of the Department of Treasury the following information with respect to the health plan or coverage in the previous plan year:

- The 50 brand prescription drugs most frequently dispensed and the total number of paid claims for each drug;
- The 50 most costly prescription drugs by total annual spending;
- The 50 prescription drugs with the greatest increase in plan expenditures over the preceding plan year;
- Total spending on health care services by such plan or coverage, categorized by type of costs, including hospital, health care provider, clinical services, prescription drugs, and other medical costs;
- Spending on prescription drugs by the plan or coverage, and the enrollees;
- Average monthly premium paid by the employer and by participants and beneficiaries; and
- Impact of rebates, fees and other remuneration paid by drug manufacturers on premiums and out-of-pocket costs.[35]

Office of Insurance Regulation

The OIR is responsible for the regulation of insurers, HMOs, and other risk-bearing entities.[36] Prior to transacting insurance in Florida or operating a HMO, an insurer or HMO, respectively must meet certain requirements to obtain a certificate of authority from the OIR.[37]
Section 624.3161, F.S., authorizes the OIR to conduct market conduct examinations of insurers.[38] The entity subject to an examination is responsible for the payment of the examination costs, as provided in s. 624.320, F.S.

[32] 45 CFR 158.210 and 158.211.
[33] Medical loss ratio (MLR) is defined as: A basic financial measurement used in the Affordable Care Act to encourage healthplans to provide value to enrollees. If an insurer uses 80 cents out of every premium dollar to pay its customers' medical claims and activities that improve the quality of care, the company has a medical loss ratio of 80 percent. https://www.healthcare.gov/glossary/medical-loss-ratio-mlr/#:~:text=A%20basic%20financial%20measurement%20used,medical%20loss%20ratio%20of%2080%25 (last visited Feb. 10, 2022).
[34] 42 U.S.C. s. 2718.
[35] 42 USC s. 300gg-120.
[36] Section 20.121(3)(a)1., F.S.
[37] Sections 624.404 and 641.21, F.S.
[38] Section 624.3161, F.S.

Oversight of PBMs

A PBM is a person or entity doing business in Florida, which contracts to administer prescription drug benefits on behalf of a health insurer or a HMO to insureds or subscribers of this state.[39] The PBMs are required to register with the Office of Insurance Regulation (OIR).[40] The registration process requires an applicant to remit a nonrefundable fee not to exceed $500, a copy of certain corporate documents, and a completed registration form. The current registration fee is five dollars.[41] Initial registration and registration certificate renewals are valid for two years and are nontransferable.[42] Currently, 66 pharmacy benefit managers have a letter of registration with the OIR.[43]

Mandatory Contractual Provisions. The Insurance Code[44] mandates contracts between health insurers or HMOs and PBMs contain certain provisions. However, there is no statutory penalty if the PBM does not comply with these contractual provisions. These mandatory contractual provisions require the PBM to:

- Update the maximum allowable cost (MAC) pricing information at least once every seven calendar days;
- Maintain a process that will eliminate drugs from the MAC lists or modify drug prices in a timely manner to remain consistent with changes in pricing data;
- Not limit a pharmacist's ability to disclose whether the cost-sharing obligation exceeds the retail price for a covered prescription drug, and the availability of a more affordable alternative drug, pursuant to s. 465.0244, F.S.; and
- Not require an insured to pay for a prescription drug at the point of sale in an amount that exceeds the lesser of:
  - The applicable cost sharing amount; or
  - The retail price of the drug in the absence of prescription drug coverage.

Maximum Allowable Cost. Current law defines the term, "maximum allowable cost" (MAC) as the per-unit amount that a PBM reimburses a pharmacist for a prescription drug, excluding dispensing fees, prior to the application of copayments, coinsurance, and other cost-sharing charges, if any.[45]

Payment of claims. Current law requires a PBM, acting on behalf of an insurer or HMO, to pay a provider's claim within a prescribed time.[46] Further, the Department of Financial Services (DFS) reviews alleged violations, relating to claims of providers not paid or denied by the insurer or HMO.[47]

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[39] Section 624.490, F.S.
[40] *Id.*
[41] Office of Insurance Regulation, Registration Form for Pharmacy Benefit Manager AllFormsPBM.pdf (floir.com) (last visited Jan. 27, 2022).
[42] Rules 69O-238.001 and 69O-238.002, F.A.C.
[43] OIR, Company Directory: Search Results available at https://www.floir.com/CompanySearch/ (last visited Jan. 28, 2022).
[44] Sections 627.64741, 627.6572, and 641.314, F.S.
[45] *Id.*
[46] Sections 627.6131 and 641.3155, F.S.
[47] Department of Financial Services, *Medical Providers, find out who to contact about your claim payment concerns* at https://apps.fldfs.com/eservice/MedicalProvider.aspx (last viewed Jan. 28, 2022).

Florida Pharmacy Audits

Pursuant to ch. 465, F.S., the Florida Pharmacy Act, a "pharmacy" includes a community pharmacy, an institutional pharmacy, a nuclear pharmacy, a special pharmacy, and an Internet pharmacy. 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.[48] The term, "independent pharmacy," is not defined.

Pharmacies are subject to routine audits by an insurer, HMO, or a PBM acting on behalf of an insurer or HMO. Audits of pharmacies are conducted to determine compliance with respect to billing, reimbursement, and other contractual requirements.[49] Section 465.1885, F.S., prescribes the following rights of a pharmacy in connection with an audit conducted directly or indirectly by an insurance company, a managed care company, or a PBM:

- To be notified at least seven calendar days before the initial onsite audit;
- To have the onsite audit scheduled after the first three calendar days of a month unless the pharmacist consents otherwise;
- To have the audit period limited to 24 months after the date a claim is submitted to or adjudicated by the entity;
- To have an audit that requires clinical or professional judgment conducted by or in consultation with a pharmacist;
- To use the written and verifiable records of a hospital, physician, or other authorized practitioner, which are transmitted by any means of communication, to validate the pharmacy records in accordance with state and federal law;
- To be reimbursed for a claim that was retroactively denied for a clerical error, typographical error, scrivener's error, or computer error if the prescription was properly and correctly dispensed, unless a pattern of such errors exists, fraudulent billing is alleged, or the error results in actual financial loss to the entity;
- To receive the preliminary audit report within 120 days after the conclusion of the audit;
- To produce documentation to address a discrepancy or audit finding within 10 business days after the preliminary audit report is delivered to the pharmacy;
- To receive the final audit report within six months after receiving the preliminary audit report; and
- To have recoupment or penalties based on actual overpayments and not according to the accounting practice of extrapolation.[50]

However, neither the Department of Health nor the Board of Pharmacy has authority under ch. 465, F.S., the Florida Pharmacy Act, to enforce these provisions against any entity not complying with these requirements.

Statewide Provider and Health Plan Claim Dispute Resolution Program

The Agency for Health Care Administration (agency), administers the Statewide Provider and Health Plan Claim Dispute Resolution Program, which assists contracted and noncontracted

[48] Section 465.003(11), F.S.
[49] JD Supra, *Pharmacy Compliance: Will Your Pharmacy's Policies and Protocols Withstand a DEA or PBM Audit?* (Aug. 3, 2020), at https://www.jdsupra.com/legalnews/pharmacy-compliance-will-your-pharmacy-78764/ (last visited Jan. 28, 2022).
[50] Section 465.188, F.S., prescribes the rights of a pharmacy in connection with a Medicaid audit.

providers and health plans to resolve claim disputes that are not resolved by the provider and the health plan.[51] The agency contracts with an independent dispute resolution organization to assist health care providers and health plans in order to resolve claim disputes. These services are available to Medicaid managed care providers and health plans. Claims submitted to managed care plans that have been denied in full or in part, or allegedly underpaid or overpaid, may be eligible for dispute under the arbitration process.[52]

State Group Insurance Program

Under the authority of s. 110.123, F.S., the Department of Management Services (department), through the Division of State Group Insurance (DSGI), administers the state group insurance program under a cafeteria plan consistent with s. 125, Internal Revenue Code to provide medical and prescription drug benefits for state employees and state university employees. To administer the program, the department contracts with third-party administrators for self-insured health plans, fully insured HMOs, and a pharmacy benefits manager (PBM) for the self-insured State Employees' Prescription Drug Program (program) pursuant to s. 110.12315, F.S. The current PBM for the state employees' prescription drug plan is CaremarkPCS Health, LLC (CVS Caremark).[53]

2020 U.S. Supreme Court Decision

In 2015, Arkansas enacted a law[54] that effectively requires PBMs to reimburse Arkansas pharmacies at a price equal to or higher than the pharmacy's acquisition cost. To accomplish this result, the law requires PBMs to update their MAC lists in a timely manner when drug prices increase, and to provide pharmacies with an administrative appeal process to challenge MAC reimbursement rates that are below the pharmacies' acquisition costs.[55] If a pharmacy could not have acquired the drug at a lower price from its typical wholesaler, a PBM must increase its reimbursement rate to cover the pharmacy's acquisition cost.[56] A PBM must also allow pharmacies to "reverse and rebill" each reimbursement claim affected by the pharmacy's inability to procure the drug from its typical wholesaler at a price equal to or less than the MAC reimbursement price.[57] Lastly, the law allows a pharmacy to decline to sell a drug to a consumer if the relevant PBM will reimburse the pharmacy at less than its acquisition cost.[58]

In late 2020, the U.S. Supreme Court decided that Arkansas' law regulating PBMs was not preempted by the federal Employee Retirement Income Security Act of 1974 (ERISA)[59] because

[51] Section 408.7057, F.S.
[52] *Id.*
[53] Department of Management Services, Division of State Group Insurance, Contacts, available at Contact Information / Health | MyBenefits / Department of Management Services (myflorida.com) (last visited Jan. 27, 2022)
[54] AR SB 688, 2015 90th General Assembly (Apr. 2, 2015). Act 900, 2015 Session.
[55] Arkansas Code 17-92-507 (2019 Supp.)
[56] Section 17–92– 507(c)(4)(C)(i)(b) (Supp. 2019)
[57] Section 17–92–507(c)(4)(C)(iii) (Supp. 2019)
[58] Section 17–92–507(e) (Supp. 2019)
[59] 88 Stat. 829, as amended, 29 U. S. C. s. 1001 *et seq.*

the Arkansas law has neither an impermissible connection with nor reference to ERISA[60] and is therefore not preempted.[61]

III. Effect of Proposed Changes:

Section 1 amends s. 624.3161, F.S., to authorize the Office of Insurance Regulation (OIR) to conduct market conduct examinations of pharmacy benefits managers (PBMs). This section currently authorizes the OIR to examine insurers and other specified entities.

Section 2 amends s. 624.490, F.S., to provide a person who fails to register with the OIR while operating as pharmacy benefit manager is subject to a fine of $10,000 per violation.

Section 3 transfers s. 465.1885, F.S., renumbers the section as s. 624.491, F.S., and amends the section to clarify the existing rights of a pharmacy, relating to a pharmacy audit, are statutory requirements for an insurer or health maintenance organization (HMO), or any entity acting on behalf of the insurer or HMO, including but not limited to a PBM, conducting a pharmacy audit. The section specifies:

- Prior notice requirements for onsite audits;
- Audit date scheduling requirements;
- Use of a consulting pharmacist;
- Limitation on the duration of the audit period;
- Use of written and verifiable records of health care providers to validate pharmacy records;
- Retroactive reimbursement for claims denied for certain errors;
- Deadline for the provision of preliminary audits;
- Allowance for production of preliminary documentation to rebut an audit finding;
- Deadline for production of the final audit; and
- Methodology for calculating final recoupment and penalties.

The section authorizes a pharmacy to appeal final audit findings as to whether a claim payment is due and the amount of a claim payment is due with the Statewide Provider and Health Plan Claim Dispute Resolution Program at the Agency for Health Care Administration pursuant to s. 408.7057, F.S.

The section provides a health insurer or HMO that, under terms of a contract, transfers to a PBM the obligation to pay a pharmacy licensed under ch. 465, F.S., for any pharmacy claim arising from services provided to or for the benefit of an insured or subscriber remains responsible for a violation of this section.

Section 4 provides that this bill takes effect July 1, 2022.

[60] 29 USC s. 1144(a).
[61] *Rutledge vs. Pharmaceutical Care Management Association* (Dec. 10, 2020) No. 18-540.

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 clarifies statutory provisions relating to pharmacy audits to impose audit requirements rather than rights, which will provide greater transparency regarding the audit process. The bill provides pharmacies with a process to appeal pharmacy benefits manager (PBM) audit filings related to claim payments with the Statewide Provider and Health Plan Claim Dispute Resolution Program.

Since the bill authorizes the Office of Insurance Regulation (OIR) to conduct market conduct examinations of PBMs, the bill will increase the administrative costs of health insurers, health maintenance organizations (HMOs), and PBMs to the extent PBMs are examined. Entities examined by the OIR are responsible for the payment of the examination expenses.[62]

[62] Section 624.6131(4), F.S.

C. Government Sector Impact:

Office of Insurance Regulation[63]

The OIR estimates a recurring negative fiscal impact of $125,000 to $200,000 as the OIR will need to contract with a pharmacist in order to obtain pharmacy related training, provide oversight of PBM market conducted examinations, and respond to complaints involving pharmacy audits.

Department of Management Services/Division of State Group Insurance

The costs of a PBM market conduct examination conducted by the OIR could result in an indeterminate increase in administrative costs of the program's PBM. These costs could be recouped from individuals enrolled in the Division of State Group Insurance program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 3 requires a health insurer or health maintenance organizations (HMO), and any entity acting on their behalf, including a pharmacy benefit manager (PBM), to comply with the pharmacy audit provisions. However, no penalty is authorized for noncompliance.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 624.3161 and 624.490.

This bill transfers, renumbers, and amends section 465.1885 of the Florida Statutes to section 624.491 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.

[63] Office of Insurance Regulation, *2022 Legislative Session, Analysis SB 1476* (Jan. 10, 2022).

By Senator Wright

14-00145A-22 20221476__

A bill to be entitled

An act relating to prescription drug coverage; amending s. 624.3161, F.S.; authorizing the Office of Insurance Regulation to examine pharmacy benefit managers; specifying that certain examination costs are payable by persons examined; amending s. 624.490, F.S.; providing a penalty for failure to register as a pharmacy benefit manager under certain circumstances; transferring, renumbering, and amending s. 465.1885, F.S.; revising the entities conducting pharmacy audits to which certain requirements and restrictions apply; authorizing audited pharmacies to appeal certain findings; providing that health insurers and health maintenance organizations that transfer a certain payment obligation to pharmacy benefit managers remain responsible for specified violations; providing an effective date.

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

Section 1. Subsections (1) and (3) of section 624.3161, Florida Statutes, are amended to read:

624.3161 Market conduct examinations.—

(1) As often as it deems necessary, the office shall examine each pharmacy benefit manager as defined in s. 624.490; each licensed rating organization; ~~,~~ each advisory organization; ~~,~~ each group, association, carrier~~,~~ as defined in s. 440.02, or other organization of insurers which engages in joint underwriting or joint reinsurance; ~~,~~ and each authorized insurer

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transacting in this state any class of insurance to which the provisions of chapter 627 are applicable. The examination shall be for the purpose of ascertaining compliance by the person examined with the applicable provisions of chapters 440, 624, 626, 627, and 635.

(3) The examination may be conducted by an independent professional examiner under contract to the office, in which case payment shall be made directly to the contracted examiner by the insurer or person examined in accordance with the rates and terms agreed to by the office and the examiner.

Section 2. Present subsection (6) of section 624.490, Florida Statutes, is redesignated as subsection (7), and a new subsection (6) is added to that section, to read:

624.490 Registration of pharmacy benefit managers.—

(6) A person who fails to register with the office while operating as a pharmacy benefit manager is subject to a fine of $10,000 for each violation.

Section 3. Section 465.1885, Florida Statutes, is transferred, renumbered as section 624.491, Florida Statutes, and amended to read:

624.491 ~~465.1885~~ Pharmacy audits~~; rights~~.—

(1) A health insurer or health maintenance organization providing pharmacy benefits through a major medical individual or group health insurance policy or a health maintenance organization contract, respectively, must comply with the requirements of this section when the health insurer or health maintenance organization or any person or entity acting on behalf of the health insurer or health maintenance organization, including, but not limited to, a pharmacy benefit manager as

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defined in s. 624.490, audits the records of a pharmacy licensed under chapter 465. The person or entity conducting such audit must ~~If an audit of the records of a pharmacy licensed under this chapter is conducted directly or indirectly by a managed care company, an insurance company, a third-party payor, a pharmacy benefit manager, or an entity that represents responsible parties such as companies or groups, referred to as an "entity" in this section, the pharmacy has the following rights~~:

(a) Except as provided in subsection (3), notify the pharmacy ~~To be notified~~ at least 7 calendar days before the initial onsite audit for each audit cycle.

(b) Not schedule an ~~To have the~~ onsite audit during ~~scheduled after~~ the first 3 calendar days of a month unless the pharmacist consents otherwise.

(c) Limit the duration of ~~To have~~ the audit period ~~limited~~ to 24 months after the date a claim is submitted to or adjudicated by the entity.

(d) In the case of ~~To have~~ an audit that requires clinical or professional judgment, conduct the audit in consultation with, or allow the audit to be conducted by, ~~or in consultation with~~ a pharmacist.

(e) Allow the pharmacy to use the written and verifiable records of a hospital, physician, or other authorized practitioner, which are transmitted by any means of communication, to validate the pharmacy records in accordance with state and federal law.

(f) Reimburse the pharmacy ~~To be reimbursed~~ for a claim that was retroactively denied for a clerical error,

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typographical error, scrivener's error, or computer error if the prescription was properly and correctly dispensed, unless a pattern of such errors exists, fraudulent billing is alleged, or the error results in actual financial loss to the entity.

(g) Provide the pharmacy with a copy of ~~To receive~~ the preliminary audit report within 120 days after the conclusion of the audit.

(h) Allow the pharmacy to produce documentation to address a discrepancy or audit finding within 10 business days after the preliminary audit report is delivered to the pharmacy.

(i) Provide the pharmacy with a copy of ~~To receive~~ the final audit report within 6 months after the pharmacy's receipt of ~~receiving~~ the preliminary audit report.

(j) Calculate any ~~To have~~ recoupment or penalties based on actual overpayments and not according to the accounting practice of extrapolation.

(2) ~~The rights contained in~~ This section does ~~do~~ not apply to:

(a) Audits in which suspected fraudulent activity or other intentional or willful misrepresentation is evidenced by a physical review, review of claims data or statements, or other investigative methods;

(b) Audits of claims paid for by federally funded programs; or

(c) Concurrent reviews or desk audits that occur within 3 business days after ~~of~~ transmission of a claim and where no chargeback or recoupment is demanded.

(3) An entity that audits a pharmacy located within a Health Care Fraud Prevention and Enforcement Action Team (HEAT)

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

Task Force area designated by the United States Department of Health and Human Services and the United States Department of Justice may dispense with the notice requirements of paragraph (1)(a) if such pharmacy has been a member of a credentialed provider network for less than 12 months.

(4) Pursuant to s. 408.7057, and after receipt of the final audit report issued under paragraph (1)(i), a pharmacy may appeal the findings of the final audit report as to whether a claim payment is due and as to the amount of a claim payment.

(5) A health insurer or health maintenance organization that, under terms of a contract, transfers to a pharmacy benefit manager the obligation to pay a pharmacy licensed under chapter 465 for any pharmacy benefit claims arising from services provided to or for the benefit of an insured or subscriber remains responsible for a violation of this section.

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

The Florida Senate

APPEARANCE RECORD

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2/28/2022
Meeting Date

Appropriations
Committee

SB1476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Michael Jackson

Phone (850) 222-2400

Address 610 North Adams Street
Street

Email jackson@pharmview.com

Tallahassee Florida 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida Pharmacy 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)

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2/28/2022
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Approps
Committee

1476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Joni Hunt Phone 386.425.4000

Address 303 Clyde Morris Blvd Email Joni.Hunt@Halifax.org
Street

Daytona Bch FL 32114
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Halifax Health

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

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

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The Florida Senate

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2.28.22	SB 1476
Meeting Date	Bill Number or Topic
Appropriations	
Committee	Amendment Barcode (if applicable)

Name Larry Williams

Phone 850.521.1980

Address 215 S. Monroe Street, Suite 601
Street

Tallahassee, FL 32301
City *State* *Zip*

Email lwilliams@gunster.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:
American Pharmacy Cooperative Providers

☐ 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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2/28/22
Meeting Date

Appropriations
Committee

SB 1476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Kelly Mallette

Phone (850) 224-3427

Address 104 W Jefferson Street
Street

Email kelly@rlbookpa.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: Small Business Pharmacies Aligned for Reform

☐ 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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2/28/22
Meeting Date

Approps
Committee

SB 1474
Bill Number or Topic

Amendment Barcode (if applicable)

Name Claudia Dowant

Phone 850 567 0979

Address
Street

Email

City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:

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

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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2/28/22
Meeting Date

Appropriations
Committee

1476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Greg Black

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Email Greg@WaypointStrat.com

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:
National Association of Chain Drug Stores (NACDS)

☐ 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)

28 February 2022

Meeting Date

APPEARANCE RECORD

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1476

Bill Number or Topic

Appropriations

Committee

Amendment Barcode (if applicable)

Name Cynthia Henderson

Phone 8505590855

Address 108 E Jefferson St

Email cyhenderson@Me.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:

Epic Pharmacies

☐ 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 Appropriations

BILL:	CS/CS/HB 1557
INTRODUCER:	Judiciary Committee; Education & Employment Committee; and Representative Harding and others
SUBJECT:	Parental Rights in Education
DATE:	February 25, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Palazesi/Grace	Sadberry	AP	**Favorable**

I. Summary:

CS/CS/HB 1557 specifies how a parent's fundamental right to make decisions regarding the care and upbringing of his or her child must be addressed in the public school setting. The bill requires that school districts adopt procedures for notifying parents if there is a change in their student's services or monitoring related to a student's mental, emotional, or physical health or well-being. All procedures adopted under the bill must reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children by requiring school district personnel to encourage students to discuss issues related to his or her well-being with his or her parent.

The bill prohibits school districts from maintaining procedures that withhold information, or encourage students to withhold information, related to a student's mental, emotional, or physical health or well-being from parents. A school district may only withhold information if a prudent person would reasonably believe that disclosure would subject the student to abuse, abandonment, or neglect.

The bill prohibits instruction on sexual orientation or gender identity in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students.

At the beginning of each school year, a school district must notify parents of all health care services offered at their student's school and provide the parent the opportunity to individually consent to, or decline, each service. Additionally, schools may not administer a questionnaire or health screening form to a student in kindergarten through grade 3 without first receiving consent from the student's parent.

All school district student support services training must adhere to guidelines, standards, and frameworks established by the Department of Education (DOE). By June 30, 2023, the DOE must review and update, as necessary, all relevant guidelines, standards, and frameworks for compliance with this bill.

The bill creates a cause of action for parents that permits them to enforce their rights through declaratory and injunctive relief. A prevailing parent is entitled to attorney fees and court costs and may be awarded damages.

The bill does not appear to have a fiscal impact. See Section V. Fiscal Impact Statement.

The bill has an effective date of July 1, 2022.

II. Present Situation:

Constitutional Rights of Parents

It is well settled that the interest of parents in the care, custody, and control of their children is perhaps the oldest of the recognized fundamental liberty interests protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.[1] This fundamental liberty interest is rooted in the fundamental right of privacy in making important decisions relating to marriage, family relationships, and child rearing and education.[2] The United States Supreme Court has explained the fundamental nature of this right is rooted in history and tradition:

> The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition. [3]

The Florida Supreme Court has likewise recognized that parents have a fundamental liberty interest in determining the care and upbringing of their children.[4] These rights may not be intruded upon absent a compelling state interest.[5] According to the Florida Supreme Court, when analyzing a statute that infringes on the fundamental right of privacy, the applicable standard of review requires that the statute survive the highest level of scrutiny:

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[1] *Santosky v. Kramer*, 455 U.S. 745, 748 and 753 (1982) (holding the fundamental liberty interest of natural parents in the care custody, and management of their child is protected by the Fourteenth Amendment, and termination of any parental rights requires due process proceedings); *Troxel v. Granville,* 530 U.S. 57, 66 (2000) (holding there is a fundamental right under the Fourteenth Amendment for parents to oversee the care, custody, and control of their children).

[2] *Carey v. Population Svcs. Int'l*, 431 US 678, 684-685 (1977) (recognizing the right of privacy in personal decisions relating to marriage, family relationships, child rearing, and education); *See Wisconsin v. Yoder*, 406, U.S. 205, 232-33 (1972) (holding a state law requiring that children attend school past eight grade violates the parents' constitutional right to direct the religious upbringing of their children); See *Parham v. J.R.*, 442 U.S. 584, 602 (1979) (recognizing the presumption that parents act in their children's best interest); *Meyer v. Nebraska*, 262 U.S. 390, 400-01 (1923) (affirming that the Constitution protects the preferences of the parent in education over those of the state)*; Pierce v. Society of Sisters,* 268 U.S. 510, 534-35 (1925) (recognizing the right of parents to direct the upbringing of and education of their children).

[3] *Wisconsin v. Yoder*, 406, U.S. 205, 232 (1972).

[4] *Beagle v. Beagle*, 678 So. 2d 1271, 1272 (Fla. 1996) (holding a state law violated a parent's constitutional right to privacy by imposing grandparent visitation rights over objection of the parent without evidence of harm to the child or other compelling state interest).

[5] *Id*. *See, e.g., Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc*., 379 So. 2d 633, 637 (Fla. 1980) and *Belair v. Drew*, 776 So. 2d 1105, 1107 (Fla. 5th DCA 2001).

> The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means. [6]

The United States Supreme Court has held that students in schools are 'persons' under the constitution and that they are possessed of fundamental rights which the state must respect.[7] Florida's constitution provides broad protections to its citizen's right to privacy[8] and the Florida Supreme Court has held that such protections extend to minors.[9] However, the rights to privacy granted to minors do not invalidate a state's effort to protect minors from the conduct of others[10] nor do they necessarily override the fundamental rights of parents related to child rearing.[11]

Parents' Bill of Rights

Overview

In 2021,[12] the legislature created the Parents' Bill of Rights which enumerates parental rights with respect to a minor child for education, health care, and criminal justice procedures.[13] The bill prohibits the state, its political subdivisions, any other governmental entities and any other institutions from infringing upon the fundamental right of a parent to direct the upbringing, education, health care, and mental health of his or her minor child without demonstrating a compelling state interest for such actions.[14]

Additionally, the Legislature found that important information relating to a minor child should not be withheld, either inadvertently or purposefully, from his or her parent, including information relating to the minor child's health, well-being, and education, while the minor child is in the custody of the school district. Therefore, the Legislature established a consistent mechanism for parents to be notified of information relating to the health and well-being of their minor children.[15]

Parents' Rights Related to Education of their Child

The Parents' Bill of Rights enumerates several rights of a parent, such as:

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[6] *Winfield v. Division of Pari-Mutuel Wagering, Dept. of Bus. Regulation*, 477 So. 2d 544, 547 (Fla. 1985).
[7] *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969).
[8] Art. I, s. 23, Fla. Const.
[9] *B.B. v. State*, 659 So. 2d 256, 258 (Fla. 1995).
[10] *Id.* at 259.
[11] *Frazier ex rel. Frazier v. Winn*, 535 F.3d 1279, 1285 (11th Cir. 2008) (holding that a law requiring a parent's approval for a student to refuse to stand during the pledge of allegiance survived a facial challenge as the rights of a parent to raise their children would control in a substantial number of cases). The court did acknowledge that in individual cases, such as those involving mature high school students, the balance of rights between parents, the school, and the student could favor the student. *Id*.
[12] Chapter 2021-199, L.O.F.
[13] Chapter 1014, F.S.
[14] Section 1014.03, F.S.
[15] *See* Section 1014.02(1), F.S.

- The right to direct the education and care of his or her minor child.
- The right to direct the upbringing and the moral or religious training of the minor child.
- The right, pursuant to s. 1002.20(13), F.S., to access and review all school records relating to the minor child.
- The right to make health care decisions for his or her minor child, unless otherwise prohibited by law.
- The right to access and review all medical records of the minor child, unless prohibited by law or if the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement agency or official requests that the information not be released.[16]

The Parents' Bill of Rights is not exhaustive but, unless required by law, the rights of a parent of a minor child in Florida may not be limited or denied.[17] To this end, any employee of the state, or any of its political subdivisions, or any governmental entity may be subject to disciplinary action if they encourage or coerce a minor child to withhold information from his or her parent.[18]

However, the law specifies that it does not:

- Authorize a parent of a minor child in this state to engage in conduct that is unlawful or to abuse or neglect his or her minor child in violation of general law.
- Condone, authorize, approve, or apply to a parental action or decision that would end life.
- Prohibit a court of competent jurisdiction, law enforcement officer, or employees of a government agency that is responsible for child welfare from acting in his or her official capacity within the reasonable and prudent scope of his or her authority.
- Prohibit a court of competent jurisdiction from issuing an order that is otherwise permitted by law. [19]

In addition to the above enumerated rights, the Parents' Bill of Rights requires Florida's school districts to adopt policies designed to promote parental involvement in the public school system. Such policies must provide for:

- A plan, pursuant to s. 1002.23, F.S., for parental participation in schools to improve parent and teacher cooperation in such areas as homework, school attendance, and discipline.
- A procedure, pursuant to s. 1002.20(19)(b), F.S., for a parent to learn about his or her child's course of study, including the source of any supplemental education materials.
- Procedures for a parent to object to instructional materials, pursuant to s. 1006.28(2)(a)2., F.S. Such objections may be based on beliefs regarding morality, sex, and religion or the belief that such materials are harmful.
- Procedures, pursuant to s. 1002.20(3)(d), F.S., for a parent to withdraw his or her student from any portion of the school district's comprehensive health education required under s. 1003.42(2)(n), F.S., that relates to sex education or instruction in acquired immune deficiency syndrome education or any instruction regarding sexuality if the parent provides a written objection to his or her child's participation. Such procedures must provide for a parent

[16] Section 1014.04(1), F.S.
[17] Section 1014.04(4), F.S.
[18] Section 1014.04(3), F.S.
[19] Section 1014.04(2), F.S.

to be notified in advance of such course content so that he or she may withdraw his or her student from those portions of the course.
- Procedures, pursuant to s. 1006.195(1)(a), F.S., for a parent to learn about the nature and purpose of clubs and activities offered at his or her child's school, including those that are extracurricular or part of the school curriculum. 20

Parents must be explicitly notified about a number of parental rights and responsibilities set forth in the education code.[21] A school district may comply with these notice requirements by providing information to parents electronically or by publishing it to their website.[22]

Parental Consent for Healthcare Services in Schools

Parental Consent for Medical Treatment

Parents generally have the right to be informed about, and give consent for, proposed medical procedures on their children. However, the state also has an obligation to ensure that children receive reasonable medical treatment that is necessary for the preservation of life.[23] The state's interest diminishes as the severity of an affliction and the likelihood of death increase:[24]

> There is a substantial distinction in the State's insistence that human life be saved where the affliction is curable, as opposed to the State interest where . . . the issue is not whether, but when, for how long and at what cost to the individual . . . life may be briefly extended.

A parent may reject medical treatment for a child and the state may not interfere with such decision if the evidence is not sufficiently compelling to establish the primacy of the state's interest, or that the child's own welfare would be best served by such treatment.[25]

In 2021,[26] the Parents' Bill of Rights established parental consent requirements for health care services. Specifically, unless otherwise permitted by law, without written, parental consent:[27]
- A health care practitioner,[28] or an individual employed by such health care practitioner, may not provide or solicit or arrange to provide health care services or prescribe medicinal drugs to a minor.
- A provider[29] may not allow a medical procedure to be performed on a minor child in its facility.

[20] Section 1014.05(1), F.S.
[21] Section 1014.05(1)(f), F.S. For example, school district must provide notice about the right to exempt their student from immunizations, the right to inspect school district instructional materials, and the right to opt out of any school district data collection not required by law. *Id*.
[22] Section 1014.05(2), F.S.
[23] *Von Eiff v. Azicri*, 720 So. 2d 510, 515 (Fla. 1998).
[24] *M.N. v. S. Baptist Hosp*., 648 So. 2d 769, 771 (Fla. 1st DCA 1994).
[25] *Id*.
[26] Chapter 2021-199, F.S.
[27] Section 1014.06(1)-(2), F.S.
[28] Section 456.001, F.S.
[29] "Provider" means any activity, service, agency, or facility regulated by the agency and listed in s. 408.802, F.S.

It is a first-degree misdemeanor to violate these parental consent requirements, subject to a fine of up to $1,000 and imprisonment of up to one year,[30] and health care practitioners may also be subject to disciplinary action[31] for such violations.[32]

Medical Treatment without Parental Consent

Physicians, paramedics, emergency medical technicians, or other emergency medical services personnel are authorized to provide emergency medical care or treatment to a minor without parental consent when a child has been injured in an accident or is suffering from an acute illness, disease, or condition and delaying treatment would endanger the health or physical well-being of the minor.[33] Even in emergency situations, medical treatment can only be provided without parental consent if:

- The child's condition has rendered him or her unable to reveal the identity of his or her parents, guardian, or legal custodian, and such information is unknown to any person who accompanied the child to the hospital.
- The parents, guardian, or legal custodian cannot be immediately located by telephone at their place of residence or business. [34]

The hospital must notify the parent or legal guardian as soon as possible after the emergency medical care or treatment is administered and document in the hospital records the reason parental consent was not initially obtained. This must include a statement from the attending physician that immediate emergency medical care or treatment was necessary for the child's health or physical well-being.[35]

Current law establishes a list of people, by priority, who may consent to the medical care or treatment of a minor in instances where the treatment provider is unable to contact the parent or legal guardian and the provider has not been given contrary instructions.[36] Specifically, the following people may consent, in this order:[37]

- A health care surrogate or a person with power of attorney to provide medical consent for the minor;[38]
- The stepparent;
- The grandparent of the minor;
- An adult brother or sister of the minor; or
- An adult aunt or uncle of the minor.

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[30] Section 1014.06(5), F.S.
[31] Section 456.072(1), F.S., provides grounds for disciplinary action against health care practitioners. Section 408.813, F.S., authorizes the Agency for Health Care Administration to impose administrative fines against providers for violations of its regulations. *See e.g.* rule 64B9-8.006, F.A.C. (Board of Nursing rule including discipline for violations of s. 1014.06, F.S.).
[32] Section 1014.06(5), F.S.
[33] Section 743.064, F.S.
[34] Section 743.064(2), F.S.
[35] Section 743.064(3), F.S.
[36] Section 743.0645, F.S.
[37] Section 746.0645(2), F.S.
[38] A health care surrogate designation under s. 765.2035, F.S., executed after September 30, 2015, or a power of attorney executed after July 1, 2001, to provide medical consent for a minor includes the power to consent to medically necessary surgical and general anesthesia services for the minor unless such services are excluded by the individual who executes the health care surrogate for a minor or power of attorney, s. 743.0645(2)(a), F.S.

If a parent or legal guardian cannot be reached while the child is committed to the Department of Children Families or the Department of Juvenile Justice,[39] then the following individuals may consent to the medical care or treatment of a minor, unless the parent or legal guardian has expressly stated otherwise:[40]

- The caseworker, juvenile probation officer, or person primarily responsible for the case management of the child.
- The administrator of the state-licensed facility[41] or state-contracted or state-operated delinquency residential treatment facility where the child is committed.

In both of these instances, the treatment provider must document the reasonable attempts made to contact the parent or legal guardian in the minor's treatment records, and must notify the parent or legal guardian as soon as possible after the medical care or treatment is administered.[42]

The Parents' Bill of Rights consent requirements specifically do not apply to health care related to an abortion.[43] Additionally, the Parents' Bill of Rights created an exception for parental consent requirements for a clinical laboratory, unless the services provided are delivered through a direct encounter with the minor at the clinical laboratory facility.[44]

School District Compliance with Parental Consent for Health Care Services

Public schools in Florida offer a wide range of health care services to students ranging from treatment of minor cuts and scrapes to vision, hearing, scoliosis, and other screenings to the administration of immunizations and emotional and mental health counseling. To comply with the requirement for parental consent when providing health care services to minors, school districts have developed parental consent forms. In some instances, parents are provided the opportunity to consent individually to services provided at schools.[45] However, some school district consent forms provide for a blanket consent to all health care services provided through the school district.[46]

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[39] Specifically, under chs. 39, 984, or 985, F.S.
[40] Section 743.0645, F.S.
[41] Section 393.067, F.S., licensed facilities for individuals with developmental disabilities; s. 394.875, F.S., licensed mental health facilities for children and adolescents; s. 409.175, F.S., licensed family foster homes, residential child-caring agencies, and child-placing agencies.
[42] Section 743.0645(2)-(4), F.S.
[43] Section 1014.06(3), F.S. Abortions in Florida are exclusively governed by ch. 390, F.S.
[44] Section 1014.06(4), F.S.
[45] Broward County Public Schools, *Parent/Guardian Consent for School Health Services*, August 2021, *available at* https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/20468/PARENT%20GUARDIAN%20CONSENT%20FOR%20SCHOOL%20HEALTH%20SERVICES_1.pdf; Florida Department of Health in Pinellas County, *Consent for School-Based Health Clinic Services*, April 2021, *available at* https://pinellas.floridahealth.gov/programs-and-services/clinical-and-nutrition-services/school-clinics/_documents/clinic-consent-packet.pdf; Bay District Schools, *Parental Consent for School Health Services 2021-2022*, *available at* https://www.bay.k12.fl.us/uploads/BDS%20School%20Health%20Consent%20Form%202021-22%20SY%20ENGLISH.pdf.
[46] *See* Brevard Public Schools, *Parental Consent for Healthcare*, *available at* https://fl02201431.schoolwires.net/site/handlers/filedownload.ashx?moduleinstanceid=10161&dataid=80765&FileName=Parental%20Consent%20for%20Healthcare.pdf; School District of Osceola County, *Student Health Information*, Feb. 2020, *available at* https://www.osceolaschools.net/cms/lib/FL50000609/Centricity/Domain/2370/Health%20Form.pdf; Sarasota County Schools, *Parental Consent for Health Services 2021-2022*, July 2021, *available at*

Special Magistrate

A special magistrate is a public officer belonging to the civil organization of the state, and invested with powers and functions which may be either judicial, legislative, or executive.[47]

There is one instance in the education code establishing a special magistrate, to resolve differences relating to specific types of charter schools.[48] In such instance, the Commissioner of Education is required to appoint a special magistrate who is a member of The Florida Bar in good standing and who has at least 5 years' experience in administrative law. The special magistrate must hold hearings to determine facts relating to the dispute and to render a recommended decision for resolution to the State Board of Education (SBE). The special magistrate may administer oaths and issue subpoenas on behalf of the parties to the dispute or on his or her own behalf. Within 15 calendar days after the close of the final hearing, the special magistrate must transmit a recommended decision to the SBE and to the representatives of both parties. The SBE must approve or reject the recommended decision at its next regularly scheduled meeting that is more than 7 calendar days and no more than 30 days after the date the recommended decision is transmitted.[49]

III. Effect of Proposed Changes:

This bill specifies how a parent's fundamental right to make decisions regarding the care and upbringing of his or her child must be addressed in the public school setting. The bill requires that school districts adopt procedures for notifying parents if there is a change in the student's services or monitoring related to a student's mental, emotional, or physical health or well-being. The procedures must reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children by requiring school district personnel to encourage students to discuss issues related to their well-being with their parent or facilitate a discussion with the parent. However, the procedures may not prohibit parents from accessing any of their student's education and health records created, maintained, or used by the school district.

The bill expressly prohibits a school district from adopting any procedures or student support forms that:

- Require district personnel to withhold from a parent information about his or her student's mental, emotional, or physical health or well-being; or
- Encourage or have the effect of encouraging a student to withhold from a parent such information.

The bill bars school personnel from discouraging or prohibiting the notification of parents or parental involvement in critical decisions affecting a student's mental, emotional, or physical health or well-being. However, the bill allows such information to be withheld if a reasonably prudent person would believe that such disclosure would result in abuse, abandonment, or neglect of the student.

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https://www.sarasotacountyschools.net/site/handlers/filedownload.ashx?moduleinstanceid=3465&dataid=85414&FileName=Parental%20Consent%20for%20Health%20Services%202021-2022.pdf.

[47] Black's Law Dictionary, *Magistrate*, https://thelawdictionary.org/magistrate/ (last visited Feb. 25, 2022)

[48] Section 1002.333(11)(c), F.S.

[49] *Id.*

Additionally, the bill prohibits classroom instruction by school personnel and third parties about sexual orientation or gender identity in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards.

The bill requires school districts, at the beginning of each school year, to notify parents of each health care service available to their student through the school district and permit parents to consent to, or decline, each service individually. However, the bill specifies that consent to a service does not waive the parent's right to access his or her student's educational or health records or to be notified about changes in services or monitoring. The bill also requires school districts to obtain parental consent before administering a student well-being questionnaire or health screening form to a student in kindergarten through grade 3. A copy of the questionnaire or health screening form must be provided to the parent in advance.

The bill requires each school district to adopt procedures for a parent to notify the principal or designee of concerns regarding the provisions in the bill, and the process for resolving concerns within seven days of the complaint.

At a minimum the procedures must require that within 30 days after notification by the parent that the concern is unresolved, the district must either resolve the concern or provide a reason for not resolving the concern. If the concern is not resolved, a parent may:

- Request the Commissioner of Education to appoint a special magistrate who is a member of The Florida Bar in good standing and who has at least five years' experience in administrative law. The special magistrate must render a recommended decision for resolution to the State Board of Education (SBE) within 30 days after receipt of the request by the parent. The SBE must approve or reject the recommended decision at its next regularly scheduled meeting between 7 and 30 days after the recommendation. The costs of the special magistrate are the responsibility of the school district.
- Bring an action against the school district to obtain a declaratory judgment that the school district procedure or practice violates the provision in the bill and seek injunctive relief. A court may award damages and must award reasonable attorney fees and court costs to a parent who receives declaratory or injunctive relief.

The bill requires each school district to adopt policies to notify parents of these complaint procedures. The bill also specifies that the actions established in the bill do not abridge or alter rights of action or remedies in equity already existing under the common law or general law.

The bill requires that all student support training provided by school districts to school personnel adhere to guidelines, standards, and frameworks established by the Department of Education. The DOE is required to review and update, as necessary, by June 30, 2023, for compliance with the provisions of this bill, the following:

- School counseling frameworks and standards;
- Educator practices and professional conduct principles; and
- Other student services personnel guidelines, standards, or frameworks.

The bill has 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:

None.

C. Government Sector Impact:

The bill requires the DOE to review and update, as necessary, existing guidelines, standards and frameworks. School districts may need to adopt updated training materials based on the DOE review. The fiscal impact of these changes is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1001.42 of the Florida Statutes.

The bill creates an unnumbered section of Florida law.

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.

760288

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/01/2022	.	
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	.	
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The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete line 98

and insert:

parties on human sexuality may not occur

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

And the title is amended as follows:

Delete line 22

and insert:

760288

discussion about human sexuality

546314

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/01/2022	.	
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The Committee on Appropriations (Brandes) recommended the following:

Senate Substitute for Amendment (760288) (with title amendment)

Delete line 98
and insert:
parties on human sexuality or sexual activity may not occur

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete line 22

546314

and insert:

discussion about human sexuality or sexual activity

A bill to be entitled

An act relating to parental rights in education; amending s. 1001.42, F.S.; requiring district school boards to adopt procedures that comport with certain provisions of law for notifying a student's parent of specified information; requiring such procedures to reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children in a specified manner; prohibiting the procedures from prohibiting a parent from accessing certain records; providing construction; prohibiting a school district from adopting procedures or student support forms that prohibit school district personnel from notifying a parent about specified information or that encourage or have the effect of encouraging a student to withhold from a parent such information; prohibiting school district personnel from discouraging or prohibiting parental notification and involvement in critical decisions affecting a student's mental, emotional, or physical well-being; providing construction; prohibiting classroom discussion about sexual orientation or gender identity in certain grade levels or in a specified manner; requiring certain training developed or provided by a school district to adhere to standards established by

the Department of Education; requiring school districts to notify parents of healthcare services and provide parents the opportunity to consent or decline such services; providing that a specified parental consent does not wave certain parental rights; requiring school districts to provide parents with certain questionnaires or health screening forms and obtain parental permission before administering such questionnaires and forms; requiring school districts to adopt certain procedures for resolving specified parental concerns; requiring resolution within a specified timeframe; requiring the Commissioner of Education to appoint a special magistrate for unresolved concerns; providing requirements for the special magistrate; requiring the State Board of Education to approve or reject the special magistrate's recommendation within specified timeframe; requiring school districts to bear the costs of the special magistrate; requiring the State Board of Education to adopt rules; providing requirements for such rules; authorizing a parent to bring an action against a school district to obtain a declaratory judgment that a school district procedure or practice violates certain provisions of law; providing for the additional award of injunctive

relief, damages, and reasonable attorney fees and court costs to certain parents; requiring school district to adopt policies to notify parents of certain rights; providing construction; requiring the department to review and update, as necessary, specified materials by a certain date; providing an effective date.

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

Section 1. Paragraph (c) is added to subsection (8) of section 1001.42, Florida Statutes, to read:

1001.42 Powers and duties of district school board.—The district school board, acting as a board, shall exercise all powers and perform all duties listed below:

(8) STUDENT WELFARE.—

(c)1. In accordance with the rights of parents enumerated in ss. 1002.20 and 1014.04, adopt procedures for notifying a student's parent if there is a change in the student's services or monitoring related to the student's mental, emotional, or physical health or well-being and the school's ability to provide a safe and supportive learning environment for the student. The procedures must reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children by requiring school district personnel to

encourage a student to discuss issues relating to his or her well-being with his or her parent or to facilitate discussion of the issue with the parent. The procedures may not prohibit parents from accessing any of their student's education and health records created, maintained, or used by the school district, as required by s. 1002.22(2).

2. A school district may not adopt procedures or student support forms that prohibit school district personnel from notifying a parent about his or her student's mental, emotional, or physical health or well-being, or a change in related services or monitoring, or that encourage or have the effect of encouraging a student to withhold from a parent such information. School district personnel may not discourage or prohibit parental notification of and involvement in critical decisions affecting a student's mental, emotional, or physical health or well-being. This subparagraph does not prohibit a school district from adopting procedures that permit school personnel to withhold such information from a parent if a reasonably prudent person would believe that disclosure would result in abuse, abandonment, or neglect, as those terms are defined in s. 39.01.

3. Classroom instruction by school personnel or third parties on sexual orientation or gender identity may not occur in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students in

accordance with state standards.

4. Student support services training developed or provided by a school district to school district personnel must adhere to student services guidelines, standards, and frameworks established by the Department of Education.

5. At the beginning of the school year, each school district shall notify parents of each healthcare service offered at their student's school and the option to withhold consent or decline any specific service. Parental consent to a health care service does not waive the parent's right to access his or her student's educational or health records or to be notified about a change in his or her student's services or monitoring as provided by this paragraph.

6. Before administering a student well-being questionnaire or health screening form to a student in kindergarten through grade 3, the school district must provide the questionnaire or health screening form to the parent and obtain the permission of the parent.

7. Each school district shall adopt procedures for a parent to notify the principal, or his or her designee, regarding concerns under this paragraph at his or her student's school and the process for resolving those concerns within 7 calendar days after notification by the parent.

a. At a minimum, the procedures must require that within 30 days after notification by the parent that the concern

remains unresolved, the school district must either resolve the concern or provide a statement of the reasons for not resolving the concern.

b. If a concern is not resolved by the school district, a parent may:

(I) Request the Commissioner of Education to appoint a special magistrate who is a member of The Florida Bar in good standing and who has at least 5 years' experience in administrative law. The special magistrate shall determine facts relating to the dispute over the school district procedure or practice, consider information provided by the school district, and render a recommended decision for resolution to the State Board of Education within 30 days after receipt of the request by the parent. The State Board of Education must approve or reject the recommended decision at its next regularly scheduled meeting that is more than 7 calendar days and no more than 30 days after the date the recommended decision is transmitted. The costs of the special magistrate shall be borne by the school district. The State Board of Education shall adopt rules, including forms, necessary to implement this subparagraph.

(II) Bring an action against the school district to obtain a declaratory judgment that the school district procedure or practice violates this paragraph and seek injunctive relief. A court may award damages and shall award reasonable attorney fees and court costs to a parent who receives declaratory or

injunctive relief.

c. Each school district shall adopt policies to notify parents of the procedures required under this subparagraph.

d. Nothing contained in this subparagraph shall be construed to abridge or alter rights of action or remedies in equity already existing under the common law or general law.

Section 2. By June 30, 2023, the Department of Education shall review and update, as necessary, school counseling frameworks and standards; educator practices and professional conduct principles; and any other student services personnel guidelines, standards, or frameworks in accordance with the requirements of this act.

Section 3. 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

2/28/2022
Meeting Date

Appropriations
Committee

HB 1557
Bill Number or Topic

760288
Amendment Barcode (if applicable)

Name Nancy Lawther, Ph.D. Phone 407 855-7604

Address 1747 Orlando Central Pkwy Email legislation@floridapta.org
Street

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

Deliver both copies of this form to
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2-28-22
Meeting Date

Appropriations
Committee

HB 1557
Bill Number or Topic

760288
Amendment Barcode (if applicable)

Name Representative Carlos Guillermo Smith

Phone 407-801-0049

Address 2237 Stonington Avenue
Street

Email carlos.smith@myfloridahouse.gov

Orlando | FL | 32817
City | *State* | *Zip*

Reset Form

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

February 28, 2022
Meeting Date

Senate Appropriations
Committee

hb1557
Bill Number or Topic

760288
Amendment Barcode (if applicable)

Name Will Larkins

Phone 714-457-7186

Address 2809 bowerrd
Street

Email puffymarshmallow7@gmai

Winter Park FL 32792
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

February 28, 2022
Meeting Date

Senate Appropriations
Committee

HB 1557
Bill Number or Topic

760 288
Amendment Barcode (if applicable)

Name Elizabeth Bercaw

Phone 786-546-2880

Address 631 E. Minnesota Ave
Street

Email ebercaw@yahoo.com

Deland FL 32724
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:

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

2/28/2022
Meeting Date

Senate App.
Committee

HB 1557
Bill Number or Topic

760288
Amendment Barcode (if applicable)

Name Lakey Love

Phone 850-345-0018

Address 1511 Melvin St
Street

Email butterflylake@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:

☐ 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

2/28/22
Meeting Date

S. Approps.
Committee

HB 1557
Bill Number or Topic

A. 546314
Amendment Barcode (if applicable)

Name Joe Saunders

Phone 850-681-0480

Address 201 E. Park Ave, Ste. 200A
Street

Email

TLH FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
Equality 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

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2/28/22
Meeting Date

Approps
Committee

HB 1557
Bill Number or Topic

356314
Amendment Barcode (if applicable)

Name Richard Carling

Phone 724-366-8869

Address 1144 Albert Rd
Street

Email RickNgolf2d@gmail.com

Fruit Land Park 34731
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

2/28/27
Meeting Date

Appropriations
Committee

1557
Bill Number or Topic

546314
Amendment Barcode (if applicable)

Name Brandon Shaw

Phone

Address

Email

Street

Orlando FL 32812
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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2/28/2022
Meeting Date

Committee

HB 1557
Bill Number or Topic

546324
Amendment Barcode (if applicable)

Name Robyn Johnsen

Phone

Address 8621 Leeland Archer Blvd
Street

Email Robyn_Johnson

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

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

Meeting Date	#B1557 (Bill Number or Topic)
Committee	546324 (Amendment Barcode (if applicable))

Name Taina Marano

Phone (386) 846-2121

Address 312 Sears avenue
Street

Email Taina.Reyes@gmail.com

Daytona bch Sch FL 32118
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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2/28/22
Meeting Date

Appropriations
Committee

1557
Bill Number or Topic

546314 SA
Amendment Barcode (if applicable)

Name Aaron G. DiPietro

Phone 904-608-4471

Address 4853. S. Orange Ave.
Street

Email aarond@flfamily.org

Orlando FL 32806
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

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

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

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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2-28-22
Meeting Date

Appops
Committee

HB 1557
Bill Number or Topic

546 314
Amendment Barcode (if applicable)

Name Lynette Gee

Phone (424) 229-4926

Address 1447 Pelican Path
Street

Email Lynettejet@icloud.com

The Villages
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:

CFC

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

2-28-22
Meeting Date

Approps
Committee

HB 1557
Bill Number or Topic

546314
Amendment Barcode (if applicable)

Name Margaret Joseph

Phone 919 671-8993

Address 621 First Ave
Street

Email peggyruthjoseph@gmail.com

Lady Lake, FL 32159
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

2.28.22
Meeting Date

Appropriations
Committee

1557
Bill Number or Topic

546314
Amendment Barcode (if applicable)

Name Brandi Andrews

Phone 850 251 3690

Address 5225 Beattie Breeze Dr
Street

Tall FL 32309
City *State* *Zip*

Email brandi_usc21@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:

☐ 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

2-28-22
Meeting Date

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

1557
Bill Number or Topic

546314
Amendment Barcode (if applicable)

Appropriations Cmte
Committee

Name Cassie Stephens

Phone 850-509-0253

Address 157 Harlan Ct
Street

Email cassieblessed@aol.com

Tallahassee FL 32317
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

February 28, 2022
Meeting Date

Senate Appropriations
Committee

Amendment to HB 1557
Bill Number or Topic

546314 - Substitute Amendment (760288)
Amendment Barcode (if applicable)

Susan Aertker for

Name League of Women Voters-Florida

Phone 904-262-5124

Address (Susan Aertker) 10178 Foxcroft Rd W
Street

Email susaninflorida@gmail.com

Jacksonville | Fl | 32257
City | *State* | *Zip*

Waiving in support of Brandes' amendment

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:
League of Women Voters-Florida

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2-28-2028
Meeting Date

1557
Bill Number or Topic

Committee

546314
Amendment Barcode (if applicable)

Name James Kelly

Phone 469-226-3937

Address 2344 Clipper Way
Street

Email jm777kelly@mac.com

Naples FL 34104
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

2/28/22
Meeting Date

HB 1557
Bill Number or Topic

Committee

546314
Amendment Barcode (if applicable)

Name Ed Wilson

Phone 352-362-1914

Address 6960 SW 157th St
Street

Email edwilsongc@aol.com

Ocala FL 34432
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

2/28/22
Meeting Date

Approps
Committee

1557
Bill Number or Topic

546314 Brandes
Amendment Barcode (if applicable)

Name Towson Fraser

Phone 850 443 1444

Address 115 E Park Ave
Street

Email Towson@FLLobby.com

Tallahassee FL 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
Equality Florida

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

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

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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

2.28
Meeting Date

Approp
Committee

1557
Bill Number or Topic

546314
Amendment Barcode (if applicable)

Name Keith Flaugh

Phone 239-250-3520

Address 1390 Quinton St
Street

Email koflaugh@me.com

Marco Island FL 34145
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 Citizens Alliance

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/28/22
Meeting Date

Appropriations
Committee

1557
Bill Number or Topic

546314
Amendment Barcode (if applicable)

Name Christian "CJ" Joseph Walder Phone (571) 420-4965

Address 1195 NW 16th Ave Apt. 8 Email cjwalder@prismfl.org
Street

Boca Raton Floriday 33486
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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2/28/2022
Meeting Date

Appr
Committee

1557
Bill Number or Topic

546314
Amendment Barcode (if applicable)

Name Kimberly Blanden Phone

Address Email

Street

Hialeah FL 33016
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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02/28/2022
Meeting Date

APPROPRIATIONS
Committee

1557
Bill Number or Topic

546314
Amendment Barcode (if applicable)

Name KEVIN CHO TIPTON

Phone

Address

Email

Street

MIAMI FL 33132
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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2/28/2022
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Approps.
Committee

1557
Bill Number or Topic

546314
Amendment Barcode (if applicable)

Name Imani Lowe

Phone

Address
Street

Email

North Miami FL 33181
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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2/28/2020
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1557
Bill Number or Topic

Committee

546314
Amendment Barcode (if applicable)

Name John W Mahaffey

Phone 8897090574

Address 10110 88th st
Street

Email JMahaFFy45@Live.com

Seminole FL 33777
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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Committee

1557
Bill Number or Topic

546314
Amendment Barcode (if applicable)

Name JANELLE PEREZ Phone

Address Street Email

PINECREST 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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02/28/2022
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Appropriations
Committee

1557
Bill Number or Topic

546314
Amendment Barcode (if applicable)

Name Gianna Bonner

Phone

Address 555 NE 30th St
Street

Email

Miami FL 33137
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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2/28/2022
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App
Committee

1557
Bill Number or Topic

546324
Amendment Barcode (if applicable)

Name Austin Flanagan

Phone 727-504-0034

Address 2080 19th Ave SW
Street

Email flanymans30@icloud.com

Largo
City

FL
State

33774
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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2/28/22
Meeting Date

1557
Bill Number or Topic

Committee

546314
Amendment Barcode (if applicable)

Name Kinsey Duerr

Phone (563) 581-2176

Address 4560 Corsa Ln.
Street

Email Kinsey.Duerr13@gmail.com

Kissimmee FL 34746
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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Committee

HB 1557
Bill Number or Topic

546324
Amendment Barcode (if applicable)

Name Niclos Mathis

Phone 904-609-0440

Address 5663 Bryner Drive
Street

Email nick_mathis@hotmail.com

Jax FL 32244
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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2/28/22
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Committee

HB 1557
Bill Number or Topic

546324
Amendment Barcode (if applicable)

Name William Lawson

Phone 407-257-6081

Address 3622 Hedgewood Dr.
Street

Email WLAWSON@FLAFCIO.ORG

Winter Park FL 32792
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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2/28/22
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Approps
Committee

1557
Bill Number or Topic

546314
Amendment Barcode (if applicable)

Name Ida V. Eskamani

Phone

Address 134 E. Colonial Dr
Street

Orlando FL 32801
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: Florida Rising, Florida Immigrant Coalition

☐ 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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2/28/2022
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HB 1557
Bill Number or Topic

Committee

546324
Amendment Barcode (if applicable)

Name Richard A. Taylor Sr.

Phone 305 904 4996

Address 2024 Warwick St
Street

Email Richard.Taylor1997@gmail.com

Tallahassee FL 32310
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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2/28/2022
Meeting Date

Appropriations
Committee

1557
Bill Number or Topic

546314
Amendment Barcode (if applicable)

Name Javier Gomez

Phone

Address
Street

Email

Miami FL 33136
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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2/28/2022
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Approps.
Committee

1557
Bill Number or Topic

546314
Amendment Barcode (if applicable)

Name Maxx Fenning

Phone

Address
Street

Email

Boca Raton FL 33486
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)

2/28/2022
Meeting Date

The Florida Senate
APPEARANCE RECORD

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~~1557~~ 1557
Bill Number or Topic

Committee

S46314
Amendment Barcode (if applicable)

Name Lynn Ann Matley-Tobin

Phone 954-214-7036

Address 501 NE 68th Court
Street

Email LMTobin@Gmail.com

Ocala, Fl 34470
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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2/28/22
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Senate - Appropriations
Committee

1557
Bill Number or Topic

546314
Amendment Barcode (if applicable)

Name Anthony Verdugo - Christian Family Coalition

Phone 786-447-6431

Address P.O. Box 650216
Street

Email averdugo@cfcflorida.net

Miami FL. 33265
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ 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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2-28-2022
Meeting Date

Committee

1557
Bill Number or Topic

546314
Amendment Barcode (if applicable)

Name Pamela D. Mahaffy

Phone 9897090573

Address 1010 88th st.
Street

Email pmahaffy8@gmail.com

Seminole FL 3377
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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2/28/22
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S. Approps.
Committee

HB 1557
Bill Number or Topic

A. 546314
Amendment Barcode (if applicable)

Name Jon Harris Maurer

Phone 850-681-0980

Address 201 E. Park Ave., Ste. 200A
Street

Email

TLH FL 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
Equality 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

APPEARANCE RECORD

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Senate professional staff conducting the meeting

February 28, 2022
Meeting Date

Senate Appropriations
Committee

Amendment to 1557
Bill Number or Topic

546314 - Substitute Amendment (760288)
Amendment Barcode (if applicable)

Name Susan Aertker

Phone 904-262-5124

Address 10178 Foxcroft Rd W
Street

Email susaninflorida@gmail.com

Jacksonville | Fl | 32257
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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Speaking in support of

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/28/22
Meeting Date

Appropriations
Committee

PA 1557
Bill Number or Topic

546314
Amendment Barcode (if applicable)

Name January Littlejohn

Phone 561-254-9360

Address 3658 Dwight Davis Dr
Street

Email jas7854@hotmail.com

Tallahassee, FL 32312
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ 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)

2.28.22

Meeting Date

Approps

Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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1557

Bill Number or Topic

Brandes 594314

Amendment Barcode (if applicable)

Name Rep. Carlos Guillermo Smith Phone

Address 2237 Stoningtn Ave Email

Street

Orlando 32817

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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Meeting Date	1557 Bill Number or Topic
Committee	S-46314 Amendment Barcode (if applicable)

Name Gerry Showers Phone 863-244-3751

Address 1335 S. [illegible] Email gshowers@de78.org
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

Deliver both copies of this form to
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2/28/2022
Meeting Date

HB 1557
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Kimberly Keech

Phone (313) 662-4288

Address 5209 Driscoll Ct
Street

Email Kimberly.Keech@spektrum.Health

Belle Isle FL 32812
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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2/18/2022
Meeting Date

HB 1557
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Robyn Johnson Phone

Address 8621 Leeland Archer Blvd Email RobynJohnson87@gma.com
Street

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:

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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Meeting Date	Bill Number or Topic
	HB1557
Committee	**Amendment Barcode (if applicable)**

Name Taina Marano **Phone** (386) 846-2121

Address 312 Sears Avenue **Email** Taina.Reyes@gmail.com
Street

Daytona Beach Sch FL 32118
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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2-28-22
Meeting Date

Appropriations
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Barbara DeRose

Phone 251-4280

Address 625 E Brevard St
Street

Email barbaraderose1@yahoo.com

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: 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

APPEARANCE RECORD

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2/28/2022
Meeting Date

Approps
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Holly Bullard

Phone

Address 201 W. Park Ave
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:
Florida Policy Institute

☐ 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

2/28/2022
Meeting Date

Approps
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Donn Scott, Jr

Phone

Address P. O. Box 10788
Street

Email donn.scottjr@splcenter.org

Tallahassee FL 32302
~~P.O. Box 10788~~
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: SPLC Action Fund

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

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

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S-001 (08/10/2021)

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APPEARANCE RECORD

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2/28/2022
Meeting Date

Approps
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Karen Woodall

Phone

Address 519 E. Call St.
Street

Email fcfep@yahoo.com

Tallahassee FL 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Fl Center for Fiscal & Economic Policy

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

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

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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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2-28-22
Meeting Date

Appops
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Lynette Gee

Phone (424) 229-4926

Address 1447 Pelican Path
Street

Email Lynettejet@icloud.com

The Villages FL 32162
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:

CFC

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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2/28/22
Meeting Date

Senate Approps
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Annie Filkowski

Phone (239) 849-2644

Address 2618 W. Tennessee St.
Street

Email anniejae.filkowski@ppsenfl.org

Tallahassee 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:
The Florida Alliance of Planned Parenthood Affiliates

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/28/22
Meeting Date

1557
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Ella Keech

Phone 689-500-9970

Address 5209 Priscoll Ct.
Street

Email eKeech123@gmail.com

Belle Isle FL 32812
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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2/28/22
Meeting Date

1557
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Larry Baker JR

Phone 407-880-8461

Address 911 N Orange Ave
Street

Email LarryBaker@Spektrum.tlhea

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:

☐ 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

02/28/22
Meeting Date

1557
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name SVETLANA DUNN

Phone 407 492 7527

Address 295 NE IVANHOE BLVD #401
Street

Email

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:

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

2/28/22
Meeting Date

Senate Approps
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Kara Gross

Phone 786-363-4436

Address 4343 West Flagler St
Street

Email kgross@aclufl.org

Miami FL 33134
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 of Florida

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

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

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S-001 (08/10/2021)

2/28/22
Meeting Date

The Florida Senate
APPEARANCE RECORD

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

HB 1557
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name MARK BARR Phone

Address Email

Street

City State 33305 Zip

Please correct the record. thank you

Speaking: ☐ For ☐ Against ☐ Information **OR** 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

2/28/2022
Meeting Date

Appropriations
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Nancy Lawther, Ph.D. Phone 407 855-7604

Address 1747 Orlando Central Pkwy Email legislation@flondapta.org
Street

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: Florda 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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Senate professional staff conducting the meeting

2-28-21
Meeting Date

Appropriations
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Devon Graham

Phone

Address
Street

Email

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.
volunteer director @ AMERICAN ATHLETES

☐ 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

2-28-2022
Meeting Date

HB 1557
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name James Kelly

Phone 469-226-3937

Address 2344 Clipper Way
Street

Email jim777Kelly@mac.c

Naples FL 34104
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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2/28/22
Meeting Date

Approps
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Towson Fraser

Phone 850 443 1444

Address 115 E Park Ave
Street

Email Towson@FLlobby.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:
Equality Florida

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

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

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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

February 28, 2022
Meeting Date

Senate Appropriations
Committee

Susan Aertker for

1557 (don't say gay bill)
Bill Number or Topic

Amendment Barcode (if applicable)

Name League of Women Voters-Florida

Phone 904-262-5124

Address (Susan Aertker) 10178 Foxcroft Rd W
Street

Email susaninflorida@gmail.com

Jacksonville | Fl | 32257
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:
League of Women Voters-Florida

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/28/22
Meeting Date

Education
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Allison Lang

Phone 954-303-0414

Address 1740 E Jersey Ave
Street

Email allison.lang75@gmail.com

Orlando FL 32806
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

28 Feb 2022
Meeting Date

1557
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name James Toffen

Phone (727) 641-0171

Address 1644 Northwest Blvd N.
Street

Email toffenj2011@gmail.com

St. Petersburg FL 33702
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)

2-28-22

Meeting Date

The Florida Senate

APPEARANCE RECORD

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

1557

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:

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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

02/28/22
Meeting Date

Senate Appropriation
Committee

HB1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Mayah Silio

Phone 407-443-9797

Address
Street

Email mayahSilio@gmail.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

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

2-28-2022
Meeting Date

Senate Approps
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Rindala Alajaji

Phone 917-972-6053

Address
Street

Email

City State Zip 32801

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: Equality Florida

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/28/2022
Meeting Date

APPROPS
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name ARTHUR FRANCO

Phone 407-600-7048

Address 3008 SANTA MARIA AVE.
Street

Email LAWFLSTATECAPCHAIR@gmail.com

CLERMONT 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:

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

2/28/2022
Meeting Date

SENATE APPROPRIATION
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name PATRICIA PADILLA

Phone

Address
Street

Email

City State 32750 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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2/28/2022
Meeting Date

APPROPS
Committee

1557
Bill Number or Topic

546324
Amendment Barcode (if applicable)

Name ARTHUR FRANCO

Phone 407-600-7048

Address 3008 SANTA MARIA AVE.
Street

Email 4AWFLSTATECAPCHAIR@gmail.com

CLERMONT 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

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2/28/22
Meeting Date

1557
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Kinsey Doerr

Phone (563) 581-2176

Address 4560 Corsa Lane
Street

Email Kinsey.Doerr13@gmail.com

Kissimmee FL 34746
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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1557
Bill Number or Topic

APPROP.
Committee

Amendment Barcode (if applicable)

Name William Lawson

Phone 407-257-6091

Address 3622 Hedgewood Dr
Street

Email WLAWSON@FLAFCIO.ORG

Winter Park FL 32792
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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2-28-22		1557
Meeting Date		Bill Number or Topic
Committee		Amendment Barcode (if applicable)

Name Gerry Showers Phone 863-244-3751

Address 1335 S. Virginia Ave Email gshowers@dc78.org
Street

Bartow FL 33830
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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APPEARANCE RECORD

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Approp.
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Austin Flanagan

Phone 727-504-0034

Address 2080 19th Ave SW
Street

Email flannyman530@icloud.com

Largo
City

FL
State

33774
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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APPEARANCE RECORD

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1557
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name John W MahaFFy

Phone 9897080574

Address 10110 66th ST
Street

Email JMahaFFy45@Live.com

Seminole FL 33772
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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APPEARANCE RECORD

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2/28/2022
Meeting Date

APPR
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Khimberly Blandon

Phone

Address
Street

Email

Hialeah FL 33016
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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2/26/2022
Meeting Date

1557
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Lynn Ann Matley-Tobin

Phone 954 214-7036

Address 501 NE 68th Court
Street

Email LMTobin@Gmail.com

Ocala FL 34470
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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2/28/22
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Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Phone

Address 134 E. Walnut Dr
Street

Orlando FL 32801
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: Florida Rising, Florida Immigrant Coalition

☐ 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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02/28/2022
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Approp.
Committee

1558 7
Bill Number or Topic

Amendment Barcode (if applicable)

Name Niclos Mathis

Phone 904-609-0440

Address 5663 Bryner Drive
Street

Email nick_mathis@hotmail.com

Jax FL 32244
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 Approps
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Angie Gallo

Phone 407-718-9925

Address 445 W. Amelia St.
Street

Email angie.gallo@dcps.net

Orlando 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

APPEARANCE RECORD

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02/28/22
Meeting Date

Senate appropriations
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jada Gonzalez

Phone (239)-851-3946

Address
Street

Email jadagonzalez424@gmail.com

32817
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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2.28.2022	HB 1557
Meeting Date	Bill Number or Topic
Appropriations	
Committee	Amendment Barcode (if applicable)

Name Nye Davis Phone 850.251.3169

Address 2047 Sunny Dale Drive Email aknddavis@gmail.com
Street

Tallahassee FL 32312
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

APPEARANCE RECORD

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2/28/22
Meeting Date

Appropriations
Committee

SB1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Elizabeth Gilbert

Phone 386-214-9710

Address
Street

Email Egilbert@floridarising.org

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 Student Power Network

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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2-28-2022
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1557
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Pamela D Mahaffy

Phone 989 709 0573

Address 10110 68th St.
Street

Email pmahaffy8@gmail.com

Seminole FL 33777
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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02/28/2022
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1557
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name John Quinton

Phone 731 571 8512

Address 21 Traynor Ct
Street

Email john316@gmail

Gville 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:

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S-001 (08/10/2021)

The Florida Senate

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Appropriations
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Ana Guevara

Phone 561 215 1062

Address
Street

Email ana@floridansing.org

Lake Worth FL 33461
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 Student Power

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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Appropriations
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Brandon Shaw

Phone

Address
Street

Email

Orlando FL 32812
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

2/28/2022
Meeting Date

1557/834
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Dan VanTice

Phone

Address
Street

Email

St. Johns FL 32259
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

APPEARANCE RECORD

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2/20/22	1557
Meeting Date	Bill Number or Topic
Committee	Amendment Barcode (if applicable)

Name Shelley Rodden Phone 321-973-1094

Address 771 PALM DRIVE Email coolmom1239@gmail.com
Street

SATELLITE BEACH FL 32937
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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Appropriations
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Aaron G. DiPietro

Phone 904-608-4471

Address 4853 S. Orange Ave
Street

Email aarond@flfamily.org

Orlando FL 32806
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

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

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

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The Florida Senate

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Senate Appropriation
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Kaylee Sandell

Phone (850) 339-2189

Address 5068 Valley Farm Rd
Street

Email kaylee.b.sandell@gmail.com

Tallahassee FL 32303
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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2/28/22
Meeting Date

HB1557
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Kathryn Hagen

Phone 321-985-3110

Address 290 Montego Bay Ct
Street

Email Kathryn.Hagen321@gmail.com

Merritt Island FL 32953
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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2/28/22
Meeting Date

Appropriations
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Chris O'Neill

Phone

Address
Street

Email

33334
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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2/28/22
Meeting Date

Appropriations
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name January Littlejohn

Phone 561-254-9360

Address 3658 Dutchess Davis Dr
Street

Tallahassee FL 32312
City State Zip

Email jas7854@hotmail.com

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

February 28, 2022
Meeting Date

Senate Appropriations
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Will Larkins

Phone 714-457-7180

Address 2809 Bower rd
Street

Email puffymarshmallow9@gma

Winter Park FL 32792
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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2/28/22
Meeting Date

S. Approps.
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jon Harris Mauer

Phone 850-681-0980

Address 201 E. Park Ave., Ste. 200A
Street

Email

TLH FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Equality Florida

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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02/28/22
Meeting Date

Appropriations
Committee

HB 1557 Parental Rigl
Bill Number or Topic

Amendment Barcode (if applicable)

Name Michael Womack

Phone

Address
Street

Email

City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Meeting Date

Senate Appropriations
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Elizabeth Bercaw

Phone 786-546-2880

Address 631 E. Minnesota Ave
Street

Email ebercaw@yahoo.com

Deland FL 32724
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2-28-22
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Appropriations
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Cassie Stephens

Phone 850-509-0753

Address 151 Harlan Ct
Street

Tallahassee 32317
City State Zip

Email Cassieblessed@aol.com

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

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Senate professional staff conducting the meeting

2/28/2022
Meeting Date

Senate Approp.
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Lakey Love

Phone 850-345-0018

Address 151 Melvin St.
Street

Email butterflylake@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:

☐ 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 28, 2022
Meeting Date

Senate Appropriations
Committee

1557 (vigilante rules)
Bill Number or Topic

Amendment Barcode (if applicable)

Name Susan Aertker

Phone 904-262-5124

Address 10178 Foxcroft Rd W
Street

Email susaninflorida@gmail.com

Jacksonville FI 32257
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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2/28/22
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Senate Appropriations
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Rep. Christine Johnson ~ 2007 to 2010 House member ~ Quality Group S.C

Phone 803.743.2528

Address
Street

Email bgenius@gmail.com

Wilton Manors, FL 33312
City State Zip

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

* Madam Chair - If possible, I would appreciate a professional courtesy by extending my testimony time to 2 minutes. Thank you.

PLEASE CHECK ONE OF THE FOLLOWING:

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☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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S. Approps.
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Joe Saunders

Phone 850-681-0980

Address 201 E. Park Ave., Ste. 200A
Street

Email

TLH FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
Equality 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

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Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Brandi Andrews

Phone 850-251-7690

Address 5225 Gentle Breeze Dr
Street

Email brandi_usa21@yahoo.com

Tall 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:

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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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Feb. 28, 2022
Meeting Date

Appropriations
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jean Eckhoff

Phone 386 688 4641

Address 9067 131st Loop
Street

Email eckhoff.jt@gmail.com

Live Oak FL 32060
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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2/28/22	HB 1557
Meeting Date	Bill Number or Topic
Senate Apropriations	
Committee	Amendment Barcode (if applicable)

Name Paul Arons MD

Phone 850-545-8997

Address 1706 Beechwood Circle N.
Street

Email paronsmd@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:

☐ 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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2/28/22
Meeting Date

Appropriations
Committee

H.B. 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Tamara Parker

Phone

Address
Street

Email

32128
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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Committee

HB-1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Aragorn Auburn

Phone 407-376-8386

Address 1320 Waterwitch Cove Circle
Street

Email aragornauburn@gmail.com

Orlando FL 32806
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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Approps
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Richard Carlins

Phone 724 366 9869

Address 7144 Albert Rd
Street

Email rickngail2@gmail.com

Fruitland Park FL 34731
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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HB 1557

2/28/22
Meeting Date

SB 1834
Bill Number or Topic

Senate Appropriations
Committee

Amendment Barcode (if applicable)

Name Jeff Wall

Phone 850-255-1267

Address
Street

Email

32561
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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Sen. Approp
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Maya Becker

Phone 561 699 6217

Address
Street

Email

City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

2.28.22
Meeting Date

APPROPRIATIONS
Committee

1557
Bill Number or Topic

—
Amendment Barcode (if applicable)

Name BILL BUNKLEY

Phone 813.264.2977

Address PO BOX 341644
Street

TAMPA FL 33694
City State Zip

Email BILL@FERLC.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 ETHICS AND RELIGIOUS LIBERTY COMISSION

☐ 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

2/28/22
Meeting Date

Senate Appropriations
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Nicole DeNicolo

Phone 630-957-0171

Address 420 E. Church St Unit 481
Street

Email nmdenicolo@gmail.com

Orlando FC 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:

☐ 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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02/28/2022
Meeting Date

Senate Appropriation
~~Committee Florida~~
Committee

HB1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Rowan Craig

Phone 321-298-7657

Address 212 Gainey Lane
Street

Email Rowancraig2@Gmail.com

Melbourne Florida 32935
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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Senate professional staff conducting the meeting

02/28/2022
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Appropriations
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Gianna Bonner

Phone

Address
Street

Email

Miami FL 33137
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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2/28/22
Meeting Date

ATP20PS
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name JANELLE PEREZ

Phone

Address

Email

Street

PINECREST

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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2-28-22
Meeting Date

Approps
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Margaret Joseph

Phone 919 671-8993

Address 621 First Ave
Street

Email peggyruthjoseph@gmail.com

Lady Lake FL 32159
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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2/28/2022
Meeting Date

Approps.
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Imani Lowe

Phone

Address
Street

Email

North Miami FL 33181
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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02/28/2022
Meeting Date

APPROPRIATIONS
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name KEVIN CHOTIPON

Phone

Address
Street

Email

MIAMI FL 33132
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

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The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Christian "CJ" Joseph Walden Phone (571) 420-4965

Address 1195 NW 16th Ave Apt. 8 Email cjwalden@prismfl.org
Street

Boca Raton Florida 33486
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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Committee

HB1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Nicole Morse

Phone 802-989-5705

Address 1575 Spring Harbor Dr Apt I
Street

Email nikkiemorse@gmail.com

Delray Beach FL 33445
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: AFL-CIO

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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Committee

HB-1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Anthony Verdugo

Phone 786-447-6431

Address P.O. Box 650216
Street

Email averdugo@cfcflorida.net

Miami Florida 33265
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

[X] I am appearing without compensation or sponsorship.

[ ] I am a registered lobbyist, representing:

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

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The Florida Senate

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02/28/2022
Meeting Date

appropriations
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Javier Gomez

Phone

Address
Street

Email

Miami FL 33136
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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Meeting Date

Approps.
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Maxx Fenning

Phone

Address
Street

Email

Boca Raton FL 33486
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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3/28/22	HB 1557
Meeting Date	Bill Number or Topic
Appropriations	
Committee	Amendment Barcode (if applicable)

Name Salvatore Vieira Phone 407-670-5504

Address Street Email Salvatorevieira94@gmail.com

Altamonte Springs FL 32701
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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2/28/22
Meeting Date

Senate Appropriation
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Samantha Stockley

Phone 407-868-0906

Address 431 E Central Blvd APT 513
Street

Email SamiStockley@aol.com

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:

☐ 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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Meeting Date

App.
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Ed Wilson

Phone 352-362-1914

Address 6960 SW 155th St
Street

Email edwilsongc@aol.com

Dunnellon
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)

08/28/22
Meeting Date

SENATE APPROPRIAT.
Committee

The Florida Senate

APPEARANCE RECORD

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HB1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name LAURA COBB

Phone 321 978 1016

Address
Street

Email

City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

2-28-2022

Meeting Date

The Florida Senate
APPEARANCE RECORD

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1557

HB [redacted]

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name SANA (SUN-AH) HAFEEZ ORLANDO DREAM DEFENDERS

Phone 407-538-3645

Address

Street

Email schafeez@protonmail.co

Orlando

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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2/28/2022
Meeting Date

Senate Appropriations
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Anna Dennison

Phone 941-961-4387

Address
Street

Email annadennison@gmail.com

City State Zip 34233

Speaking: ☐ For ☒ Against ☐ Information **OR** 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)

2/28/2022
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Committee

The Florida Senate
APPEARANCE RECORD

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HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Zander Moricz

Phone 941-894-7497

Address
Street

Email zandermoricz@gmail.com

34229
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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SB 1557
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Lynda Bell

Phone 786-208-3292

Address 19690 Chaws Lane
Street
Tallahassee FL 32310
City State Zip

Email LyndaforLife@Bellsouth.net

Speaking: ☑ For ☐ Against ☐ Information **OR** 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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2/28/22
Meeting Date

Appropriations
Committee

HB 1557
Parental Rights Bill
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jennifer Jones

Phone

Address
Street

Email prestoj@gmail.com

32211
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

APPEARANCE RECORD

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2-28-2022
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Appropriation
Committee

HB 1557
Parental Rights Bill
Bill Number or Topic

Amendment Barcode (if applicable)

Name Tammy Ruggiero

Phone 540-680-9129

Address
Street

Email Zenfoldery@gmail.com

City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

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Committee

HB1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name JEFF PRYSTAJKO

Phone 585-414-4777

Address 9751 DORIATH CIR
Street

Email JEFF@COMEOUTWITHPRIDE-ORL

ORLANDO FL 32825
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:
EQUALITY 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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Senate Appropriation
Committee

HB1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jackie Mason

Phone 407-421-4389

Address 3186 Tobago Ct
Street

Email jacquelinemason277@gmail.com

Apopka FL 32703
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)

Feb 28 2022
Meeting Date

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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1557
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Ruth Villamizar

Phone 9546571410

Address 5790 Fox Hollow Dr
Street
Boca Raton FL 33486
City *State* *Zip*

Email pastor@Diosviviente.com

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

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02/28/22
Meeting Date

Senate Appropriations
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Olivia Solomon

Phone 786-2095330

Address 7315 SW 109 terr
Street

Email OliviaSolomon13@gmail

Miami 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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HB 1557
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Jude Speegle

Phone 386-285-3192

Address 1221 S Beach St
Street

Email JudeSpeegle@gmail.com

DB FL 32114
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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2/28/22
Meeting Date

Gen Approps
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Troy Stevenson

Phone 405 802 8229

Address 90069
Street

Email Troy.Stevenson@thetrevorproject.org

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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2/28
Meeting Date

Approps
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name K. Flaugh

Phone 239-250-3520

Address 1390 Quintana Ct
Street

Email KOFlaugh

Marco Island 34145
City State Zip

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

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FLORIDA CITIZENS ALLIANCE

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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02-28-2022
Meeting Date

Committee

1557
Bill Number or Topic

~~1557~~
Amendment Barcode (if applicable)

Name Elizabeth Santander-Cordero

Phone 954-632-4428

Address 9245 SW 43 St
Street

Email Elizabeth72020@yahoo.com

Miami FL 33165
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

1557

Meeting Date

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Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Susan Maurer

Phone 954-648-8846

Address 1765 SE 7ST

Email srhmaurer@gmail.com

Street

Ft Laud FL 33316

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

APPEARANCE RECORD

28 Feb 2022
Meeting Date

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HB 1567
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Nick Clinton

Phone 205 394 5498

Address 2008 Golf Terrace Dr.
Street

Email nquinton@gmail.com

Tallahassee FL 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

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☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/28/22
Meeting Date

1557
DONT SAY GAY
Bill Number or Topic

APPROS
Committee

Amendment Barcode (if applicable)

Name WES HODGE

Phone 3216895871

Address 2826 FITZWATER DR

Email

Street

USP FL 32792

City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

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☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

1557

The Florida Senate

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2-28-2022
Meeting Date

Appropriations
Committee

Don't Say Gay
Bill Number or Topic

Amendment Barcode (if applicable)

Name Rita Harris

Phone 407-733-6254

Address 13547 Ejay Rd
Street

Email RitaHarris7@gmail.com

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:

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S-001 (08/10/2021)

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2/28/22
Meeting Date

1557 Don't Say Gay
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Jennifer Cousins

Phone 321 208 8014

Address 951 Crystal Bay Ln
Street

Email thecousinsfamily@me.com

Orlando FL 32828
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

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☐ I am a registered lobbyist, representing:

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

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2/28/2022
Meeting Date

H 1557
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Tania Sanchez Z.

Phone (754) 2354139

Address 201 Racquet Club Rd
Street
APT S-521
Weston FL 33326
City State Zip

Email tanisanchez@gmail.com

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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APPEARANCE RECORD

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2/28/02
Meeting Date

Senate Approps.
Committee

SB1834 / HB557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Liz Seaton

Phone (202) 639-6327

Address 909 Larch Ave
Street

Takoma Pk MD 20212
City State Zip

Email lseaton@thetaskforce.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:
National LGBTQ Task Force Action Fund

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

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S-001 (08/10/2021)

The Florida Senate

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02/28/2022
Meeting Date

SB1834 / HB1557
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Julie Williams

Phone 330-727-0772

Address 7806 New York Drive
Street

Email williams.julielynn@gmail.com

Tampa FL 33619
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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2/28/2022
Meeting Date

Appropriations
Committee

CS/CS/HB 1557
[redacted]
Bill Number or Topic

Amendment Barcode (if applicable)

Name Hillary Cassel

Phone 954.202.5713

Address 5480 SW 89th Way
Street

Ft. Lauderdale FL 33312
City State Zip

Email Cassel.hillary@gmail.com

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

2/28/22
Meeting Date

The Florida Senate
APPEARANCE RECORD

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1557? 1577
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Lorynn Gavin

Phone (352) 467-0684

Address 7200 N Highland Ave
Street

Email lorynn.young@gmail

Tampa FL 33604
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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2/28/2024
Meeting Date

Sen Approp
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jonathan Kline

Phone 561-479-6117

Address 15754 Merton Bay Ct
Street

Delray Beach FL 33446
City State Zip

Email JKline2017@fau.edu

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

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02/28/22
Meeting Date

HB 1557
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Grigorx A. Rodriguez Phone 754-757-6963

Address 517 Lakeview drive Email

Street

Coral springs FL 33071

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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Meeting Date

Approps
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Phone

Address 84 E. Colonial Dr
Street

Orlando FL 32801
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: Florida Rising Florida Immigrant Coalition

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

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S-001 (08/10/2021)

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2/24/22
Meeting Date

Senate Appropriations
Committee

1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Megan Standhaft

Phone 479-372-7571

Address 8604 Fisherman's Pointe Dr
Street

Email megan.standhaft@gmail.c

Temple Terrace FL 33637
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

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2-28-22
Meeting Date

Appropriations
Committee

HB 1557
Bill Number or Topic

Amendment Barcode (if applicable)

Name Representative Carlos Guillermo Smith

Phone 407-801-0049

Address 2237 Stonington Avenue
Street

Email carlos.smith@myfloridahouse.gov

Orlando | FL | 32817
City | *State* | *Zip*

Reset Form

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

PLEASE CHECK ONE OF THE FOLLOWING:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/28/22
Meeting Date

1557
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Joseph Knoll

Phone (407) 414-1301

Address 5217 Driscoll Ct
Street
Belle Isle FL 32812
City State Zip

Email Joseph.Knoll

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

PLEASE CHECK ONE OF THE FOLLOWING:

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The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/28/22
Meeting Date

H 1557
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Luis Ramirez Phone 954 3366770

Address 201 Regent Club Rd APT- S-521 Email luisjramirez160203@gmail.com
Street

Weston Fla 33326
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)

2/28/2022
Meeting Date

The Florida Senate

APPEARANCE RECORD

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

H 1557
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Marla Ruth Schwarzer PL

Phone 954 798 5308

Address 3450 Hillsboro Blv unit 202
Street

Deerfield Beach FL 33073
City State Zip

Email zmart703@aol.com

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

PLEASE CHECK ONE OF THE FOLLOWING:

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☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

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 Appropriations

BILL:	CS/CS/HB 1563
INTRODUCER:	State Affairs Committee; Ways & Means Committee; and Representative Tomkow and others
SUBJECT:	Homestead Property Tax Exemptions for Classroom Teachers, Law Enforcement Officers, Firefighters, Child Welfare Professionals, and Servicemembers
DATE:	February 28, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gross	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/HB 1563 is linked to CS/CS/HJR 1, which proposes an amendment to the Florida Constitution to authorize the Legislature to provide a new homestead tax exemption for classroom teachers, law enforcement officers, firefighters, emergency medical technicians, paramedics, child welfare professionals, and active duty members of the United States Armed Forces, or members of the Florida National Guard.

The bill provides that any of the defined people who hold legal or beneficial title in equity to real property in this state and makes such property their or their dependent's permanent residence is entitled to an exemption of up to $50,000 on the property's value between $100,000 and $150,000, for all levies other than school district levies.

The bill directs the Legislature to appropriate money to fiscally constrained counties to offset reductions in ad valorem tax revenue resulting from the homestead exemption. Distributions to fiscally constrained counties will be made beginning in Fiscal Year 2023-2024.

The bill is contingent upon elector approval of a joint resolution substantively the same as HJR 1. If the electors approve the joint resolution, the Revenue Estimating Conference estimates that the bill will reduce local property tax revenue for all levies other than school district levies by $85.9 million beginning in Fiscal Year 2023-2024.

The bill will take effect on the effective date of the amendment proposed by CS/CS/HJR 1 or a similar joint resolution having substantially the same specific intent and purpose. If approved by the electors in the next general election in November 2022, the proposed amendment (CS/CS/HJR 1) and CS/CS/HB 1563 will take effect on January 1, 2023.

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or "property tax" is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.[1] The property appraiser annually determines the assessed or "just value"[2] of property within the taxing jurisdiction and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's "taxable value."[3] Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes[4] and limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.[5]

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;[6] however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include: agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes; land used for conservation purposes; historic properties when authorized by the county or municipality; and certain working waterfront property.[7]

Persons eligible for a property tax exemption must file an application with the property appraiser on or before March 1 of each year in which the exemption is claimed, unless such requirement has been waived by a county.[8]

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[1] Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

[2] Property must be valued at "just value" for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm's-length transaction. *See Walter v. Shuler,* 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey,* 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County,* 275 So. 2d 4 (Fla. 1973).

[3] *See* s. 192.001(2) and (16), F.S.

[4] FLA. CONST. art. VII, s. 1(a).

[5] *See* FLA. CONST. art. VII, s. 4.

[6] Section 193.011(2), F.S.

[7] FLA. CONST. art. VII, s. 4.

[8] Section 196.011, F.S.

Property Tax Exemptions for Homestead Property

Homestead Exemption

Every person having legal or equitable title to real estate and who maintains thereon his or her permanent residence or the permanent residence of a dependent (homestead property) is eligible for a homestead tax exemption of up to $25,000. The exemption applies to all ad valorem taxes levied, including levies by school districts.[9] An additional homestead exemption of up to $25,000 applies to the property's value between $50,000 and $75,000.[10] Unlike the first $25,000, the additional $25,000 exemption does not apply to ad valorem taxes levied by school districts.

Additional Homestead Exemptions for Certain Persons

The Florida Constitution authorizes the Legislature to provide additional property tax exemptions for the following persons who maintain property as a homestead:

- Counties and municipalities may grant exemptions to persons aged 65 years or over whose household income does not exceed $20,000 (low-income seniors).[11]
- A veteran or first responder[12] with a total and permanent service-connected disability is entitled to a complete exemption for the property.[13]
- A veteran with a total service-connected disability that confines him or her to a wheelchair is entitled to a complete exemption for the property. Upon the veteran's death, the exemption carries over to the veteran's unremarried surviving spouse.[14]
- A veteran disabled to a degree of 10 percent or more by misfortune or during wartime service is entitled to an exemption for any property up to $5,000. Upon the death of the veteran, the exemption carries over to the veteran's unremarried surviving spouse.[15]
- The unremarried surviving spouse of a veteran or first responder who died while on active duty is entitled to a complete exemption for the property if the veteran was a permanent resident of Florida on the day he or she died.[16]

Tax Discount on Homestead Property for a Combat-disabled Veteran

In addition to the property tax exemptions described above, certain combat-disabled veterans are entitled to a discount on their homestead property taxes.[17] The discount is calculated as a

[9] FLA. CONST. art VII, s. 6(a) and s. 196.031, F.S.
[10] Section 196.031(1)(b), F.S.
[11] FLA. CONST. Art. VII, s. 6(d)(1) and (2). The income level is adjusted each year according to changes in the consumer price index. For 2022, persons will qualify if the household income does not surpass $32,561. Florida Department of Revenue, *Florida Property Tax Valuation and Income Limitation Rates,* available at: https://floridarevenue.com/property/Documents/AdditionalHomesteadExemptions.pdf (last visited Feb. 5, 2022).
[12] "First responder" in this context means a law enforcement officer or correctional officer as defined in s. 943.10, F.S., a firefighter as defined in s. 633.102, F.S., or an emergency medical technician or paramedic as defined in s. 401.23, F.S., who is a full-time paid employee, part-time paid employee, or unpaid volunteer. Section 196.081(6)(c)1., F.S.
[13] Sections 196.081 and 196.102, F.S.
[14] Section 196.091(1) and (3), F.S.
[15] Section 196.24, F.S.
[16] Section 196.081(4) and (6), F.S.
[17] Section 196.082, F.S.

percentage equal to the percentage of the veteran's permanent, service-connected disability.[18] The discount is applied as a reduction to the taxable value of the homestead property.[19]

Fiscally Constrained Counties

Fiscally constrained counties are counties entirely within a Rural Area of Opportunity or where a 1 mill levy would raise no more than $5 million in annual tax revenue.[20] A Rural Area of Opportunity is a rural community or region that has been adversely affected by extraordinary economic events, severe distresses, natural disasters or that presents unique economic development opportunities of regional impact, as designated by the Governor.[21]

Florida's fiscally constrained counties are: Baker, Bradford, Calhoun, Columbia, Desoto, Dixie, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Okeechobee, Putnam, Suwannee, Taylor, Union, Wakulla, and Washington.[22]

The Legislature annually appropriates money to fiscally constrained counties to offset ad valorem tax revenue reductions caused by various amendments to the Florida Constitution.[23] In order to receive an offset distribution, fiscally constrained counties must annually provide the Department of Revenue with an estimate of the expected reduction in ad valorem tax revenues that are directly attributable to specified revisions of Article VII of the Florida Constitution.[24] This prevents such amendments related to property tax from negatively affecting fiscally constrained county tax revenues.

III. Effect of Proposed Changes:

The bill creates an additional homestead exemption for classroom teachers, law enforcement officers, firefighters, emergency medical technicians, paramedics, child welfare professionals, active duty members of the United States Armed Forces, or members of the Florida National Guard to exempt up to $50,000 of the assessed value of the property greater than $100,000.

In order to receive the exemption, the qualifying person must be employed on January 1 in a full-time position in one of the above-described qualifying professions.

The bill provides the following definitions:

- "Child welfare professional" means a state employee engaged in child welfare services as defined in s. 402.40(2), F.S., who holds a child welfare certification as defined in s. 402.40(2), F.S.;

[18] Section 196.082(2), F.S.
[19] Section 196.082(5), F.S.
[20] Section 218.67(1), F.S.
[21] See Section 288.0656, F.S.
[22] Florida Department of Revenue, *List of Fiscally Constrained Counties*, available at: http://floridarevenue.com/property/Documents/fcco081210.pdf (last visited Feb. 10, 2022)
[23] *See* s. 218.125, F.S.
[24] Section 218.125(2), F.S.

- "Classroom teacher" means a staff member assigned the professional activity of instructing K-12 students in courses and classroom situations, including basic instruction, exceptional student education, and career education;
- "Firefighter" means an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the division under s. 633.408, F.S.;
- "Law enforcement officer" means a law enforcement officer[25] or correctional officer[26] as defined by s. 943.10, F.S.; and
- "Servicemember" means a person serving as an active duty member of the United States Armed Forces or as a member of the Florida National Guard.

The bill prohibits a county from waiving the requirement that an annual application be made.

A person identified as receiving but not entitled to the exemption for any year in the prior 10 years is subject to repayment of the taxes exempted, plus a penalty of the unpaid taxes of 50 percent and 15 percent interest. Persons who knowingly and willfully give false information for the purpose of claiming the exemption are guilty of a first degree misdemeanor, punishable as provided by law or by fine not to exceed $5,000.

The bill directs the Legislature to appropriate money, beginning in Fiscal Year 2023-2024, to fiscally constrained counties to offset any reductions in ad valorem tax revenue resulting from the homestead exemption provided by the proposed constitutional amendment. The amount appropriated to each county is based on the county's proportion of the total reduction and is calculated as 95 percent of the estimated reduction in taxable value multiplied by the lesser of the 2023 millage rate or the millage rate for each taxing jurisdiction in the current year.

The bill authorizes the Department of Revenue to adopt emergency rules to administer the bill.

The bill will take effect on the effective date of the constitutional amendment proposed by CS/SJR 1746 and first applies to the 2023 tax roll.

[25] Section 943.10(1), F.S.: "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.

[26] Section 943.10(2), F.S.: "Correctional officer" means any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) of the Florida Constitution provides that, except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact,[27, 28] which is $2.3 million for Fiscal Year 2022-2023.[29]

The Revenue Estimating Conference determined that the reduction to local property tax revenue will be $85.9 million beginning in Fiscal Year 2023-2024 if the joint resolution is approved by the electorate. Therefore, the mandates provisions of Art. VII, s. 18 of the Florida Constitution may apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not create or raise a state tax or fee. Therefore, the requirements of Art. VII, s. 19 of the Florida Constitution do not apply.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill is contingent upon elector approval of a joint resolution substantively the same as HJR 1. If the electors approve the joint resolution, the Revenue Estimating Conference

[27] FLA. CONST. art. VII, s. 18(d).
[28] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times $0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (Sept. 2011), available at http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited Feb. 3, 2022).
[29] Based on the Demographic Estimating Conference's estimated population adopted on March 3, 2021. The conference packet is available at: http://edr.state.fl.us/Content/conferences/population/archives/210303demographic.pdf (last visited Feb. 6, 2022).

estimates that the bill will reduce local property tax revenue for all levies other than school district levies by $85.9 million beginning in Fiscal Year 2023-2024.

B. Private Sector Impact:

If the proposed amendment (CS/CS/HJR 1) is approved by 60 percent of voters in November 2022, qualifying homeowners will be entitled to reduced property taxation.

C. Government Sector Impact:

The bill requires the Legislature to appropriate money to fiscally constrained counties beginning in Fiscal Year 2023-2024, which is estimated by the REC to be $3.8 million.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 196.011 and 218.125.

The bill creates section 196.077 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 Finance and Tax on February 10, 2022:
The CS:

- Requires an appropriation to fiscally constrained counties, beginning in FY 2023-2024, to offset the reductions in ad valorem tax revenue resulting from the new homestead exemption.
- Requires the distribution to occur in January of each fiscal year to each fiscally constrained county based on each county's proportion of the total reduction.
- Calculates the reduction as 95 percent of the estimated reduction in taxable value multiplied by the lesser of the 2023 millage rate or the millage rate for each taxing jurisdiction in the current year.

B. Amendments:

None.

A bill to be entitled

An act relating to homestead property tax exemptions for classroom teachers, law enforcement officers, firefighters, emergency medical technicians, paramedics, child welfare professionals, and servicemembers; amending s. 196.011, F.S.; specifying the information that must be supplied annually to the property appraiser by classroom teachers, law enforcement officers, firefighters, emergency medical technicians, paramedics, child welfare professionals, and servicemembers who qualify for a specified exemption; creating s. 196.077, F.S.; providing definitions; providing conditions under which a classroom teacher, law enforcement officer, a firefighter, an emergency medical technician, a paramedic, a child welfare professional, or a servicemember may receive an additional homestead property tax exemption; specifying the amount of the homestead property tax exemption; providing requirements for applying for and receiving an exemption; specifying actions a property appraiser may take if a taxpayer improperly claims an exemption; providing penalties under certain conditions; amending s. 218.125, F.S.; requiring the Legislature to appropriate moneys to offset reductions in ad valorem

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tax revenues experienced by fiscally constrained counties due to certain constitutional amendments; specifying procedures for distributing such moneys; specifying procedures for applying for and receiving such moneys; specifying necessary documentation; specifying the method for calculating each fiscally constrained county's reduction in ad valorem tax revenue; specifying a mechanism for reversion of funds under certain circumstances; authorizing the Department of Revenue to adopt emergency rules; providing applicability; providing a contingent effective date.

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

Section 1. Paragraph (b) of subsection (1) and paragraph (a) of subsection (9) of section 196.011, Florida Statutes, are amended to read:

196.011 Annual application required for exemption.—

(1)

(b) The form to apply for an exemption under s. 196.031, s. 196.077, s. 196.081, s. 196.091, s. 196.101, s. 196.102, s. 196.173, or s. 196.202 must include a space for the applicant to list the social security number of the applicant and of the applicant's spouse, if any. If an applicant files a timely and

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otherwise complete application, and omits the required social security numbers, the application is incomplete. In that event, the property appraiser shall contact the applicant, who may refile a complete application by April 1. Failure to file a complete application by that date constitutes a waiver of the exemption privilege for that year, except as provided in subsection (7) or subsection (8).

(9)(a) A county may, at the request of the property appraiser and by a majority vote of its governing body, waive the requirement that an annual application or statement be made for exemption of property within the county after an initial application is made and the exemption granted. The waiver under this subsection of the annual application or statement requirement applies to all exemptions under this chapter except the exemptions ~~exemption~~ under ss. 196.077 and 196.1995 ~~s. 196.1995~~. Notwithstanding such waiver, refiling of an application or statement shall be required when any property granted an exemption is sold or otherwise disposed of, when the ownership changes in any manner, when the applicant for homestead exemption ceases to use the property as his or her homestead, or when the status of the owner changes so as to change the exempt status of the property. In its deliberations on whether to waive the annual application or statement requirement, the governing body shall consider the possibility of fraudulent exemption claims which may occur due to the waiver

of the annual application requirement. The owner of any property granted an exemption who is not required to file an annual application or statement shall notify the property appraiser promptly whenever the use of the property or the status or condition of the owner changes so as to change the exempt status of the property. If any property owner fails to so notify the property appraiser and the property appraiser determines that for any year within the prior 10 years the owner was not entitled to receive such exemption, the owner of the property is subject to the taxes exempted as a result of such failure plus 15 percent interest per annum and a penalty of 50 percent of the taxes exempted. Except for homestead exemptions controlled by s. 196.161, the property appraiser making such determination shall record in the public records of the county a notice of tax lien against any property owned by that person or entity in the county, and such property must be identified in the notice of tax lien. Such property is subject to the payment of all taxes and penalties. Such lien when filed shall attach to any property, identified in the notice of tax lien, owned by the person who illegally or improperly received the exemption. If such person no longer owns property in that county but owns property in some other county or counties in the state, the property appraiser shall record a notice of tax lien in such other county or counties, identifying the property owned by such person or entity in such county or counties, and it shall become

a lien against such property in such county or counties.

Section 2. Section 196.077, Florida Statutes, is created to read:

196.077 Additional homestead exemption for classroom teachers, law enforcement officers, firefighters, emergency medical technicians, paramedics, child welfare professionals, and servicemembers.—

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

(a) "Child welfare professional" means a state employee engaged in child welfare services, as defined in s. 402.40(2), who holds a child welfare certification, as defined in s. 402.40(2).

(b) "Classroom teacher" means a staff member assigned the professional activity of instructing K-12 students in courses in classroom situations, including basic instruction, exceptional student education, and career education.

(c) "Emergency medical technician" has the same meaning as in s. 401.23.

(d) "Firefighter" has the same meaning as in s. 633.102.

(e) "Full-time position" has the same meaning as in s. 110.107.

(f) "Law enforcement officer" means a law enforcement officer or correctional officer as those terms are defined in s. 943.10(1) and (2).

(g) "Paramedic" has the same meaning as in s. 401.23.

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(h) "Servicemember" means a person that is serving as an active duty member of the United States Armed Forces or as a member of the Florida National Guard.

(2) A person who is employed on January 1 in a full-time position as a classroom teacher, a law enforcement officer, a firefighter, an emergency medical technician, a paramedic, a child welfare professional, or a servicemember, has the legal title or beneficial title in equity to real property in this state and who in good faith makes the property his or her permanent residence or the permanent residence of another or others legally or naturally dependent upon him or her, and who qualifies to receive the exemptions provided in s. 196.031(1), is entitled to an additional exemption of up to $50,000 on the assessed valuation greater than $100,000 and up to $150,000 for all levies other than school district levies.

(3) A classroom teacher, a law enforcement officer, a firefighter, an emergency medical technician, a paramedic, a child welfare professional, or a servicemember who is qualified to claim the additional homestead tax exemption as provided in this section must file an annual application for exemption with the property appraiser on or before March 1 of the year for which the additional homestead tax exemption is claimed. The application for the exemption must be made on a form prescribed by the department and furnished by the property appraiser. The form must require the classroom teacher, law enforcement

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officer, firefighter, emergency medical technician, paramedic, child welfare professional, or servicemember to include or attach proof of employment in a qualifying full-time position and other information necessary to verify eligibility for the exemption.

(4) Receipt of the additional homestead exemption provided for in this section shall be subject to the provisions of ss. 196.131 and 196.161, if applicable.

Section 3. Section 218.125, Florida Statutes, is amended to read:

218.125 Offset for tax loss associated with certain constitutional amendments affecting fiscally constrained counties.—

(1)(a) Beginning in the 2010-2011 fiscal year, the Legislature shall appropriate moneys to offset the reductions in ad valorem tax revenue experienced by fiscally constrained counties, as defined in s. 218.67(1), which occur as a direct result of the implementation of revisions of ss. 3(f) and 4(b) of Art. VII of the State Constitution which were approved in the general election held in November 2008. The moneys appropriated for this purpose shall be distributed in January of each fiscal year among the fiscally constrained counties based on each county's proportion of the total reduction in ad valorem tax revenue resulting from the implementation of the revisions.

(b) Beginning in the 2023-2024 fiscal year, the

Legislature shall appropriate moneys to offset the reductions in ad valorem tax revenue experienced by fiscally constrained counties, as described in s. 218.67(1), which occur as a direct result of the implementation of the addition of s. 6(g) of Art. VII of the State Constitution which was approved in the general election held in November 2022. The moneys appropriated for this purpose shall be distributed in January of each fiscal year among the fiscally constrained counties based on each county's proportion of the total reduction in ad valorem tax revenue resulting from the implementation of s. 6(g) of Art. VII of the State Constitution.

(2) On or before November 15 of each year, each fiscally constrained county shall apply to the Department of Revenue to participate in the distribution of the appropriation and provide documentation supporting the county's estimated reduction in ad valorem tax revenue in the form and manner prescribed by the Department of Revenue. The documentation must include an estimate of the reduction in taxable value directly attributable to revisions of Art. VII of the State Constitution for all county taxing jurisdictions within the county and shall be prepared by the property appraiser in each fiscally constrained county. The documentation must also include the county millage rates applicable in all such jurisdictions for the current year and the prior year, rolled-back rates determined as provided in s. 200.065 for each county taxing jurisdiction, and maximum

millage rates that could have been levied by majority vote pursuant to s. 200.065(5).

(a) For purposes of paragraph (1)(a) ~~this section~~, each fiscally constrained county's reduction in ad valorem tax revenue shall be calculated as 95 percent of the estimated reduction in taxable value multiplied by the lesser of the 2010 applicable millage rate or the applicable millage rate for each county taxing jurisdiction in the current year. If a fiscally constrained county fails to apply for the distribution, its share shall revert to the fund from which the appropriation was made.

(b) For purposes of paragraph (1)(b), each fiscally constrained county's reduction in ad valorem tax revenue shall be calculated as 95 percent of the estimated reduction in taxable value multiplied by the lesser of the 2022 applicable millage rate or the applicable millage rate for each county taxing jurisdiction in the current year. If a fiscally constrained county fails to apply for the distribution, its share shall revert to the fund from which the appropriation was made.

Section 4. (1) The Department of Revenue may, and all conditions are deemed met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, to administer this act.

(2) Notwithstanding any other provision of law, emergency rules adopted pursuant to this section are effective for 6

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months after adoption and may be renewed during the pendency of procedures to adopt permanent rules.

Section 5. The amendments made by this act to s. 196.011, Florida Statutes and the creation by this act of s. 196.077, Florida Statutes, first apply to the 2023 tax roll.

Section 6. This act shall take effect on the effective date of the amendment to the State Constitution proposed by HJR 1 or a similar joint resolution having substantially the same specific intent and purpose, if such amendment to the State Constitution is approved at the next general election or at an earlier special election specifically authorized by law for that purpose.

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The Florida Senate

APPEARANCE RECORD

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February 28, 2022
Meeting Date

Appropriations
Committee

HB 1563
Bill Number or Topic

Amendment Barcode (if applicable)

Name Matt Puckett

Phone

Address 300 East Brevard Street
Street

Email matt@flpba.org

Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida Police Benevolent 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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2/28/22
Meeting Date

Appropriations
Committee

1563
Bill Number or Topic

Amendment Barcode (if applicable)

Name Chase Mitchell

Phone 850 413 5939

Address PL 11 The Capitol
Street

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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 and State Fire Marshal
Jimmy Patronis

☐ 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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2/26/2022
Meeting Date

Appropriations
Committee

HB 1563
Bill Number or Topic

Amendment Barcode (if applicable)

Name Danielle Scoggins

Phone (680) 224-1400

Address 200 S. Monroe St.
Street

Email DanielleS@Floridarealtors.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 Realtors

☐ 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 Appropriations

BILL:	CS/CS/SB 1610
INTRODUCER:	Appropriations Committee; Finance and Tax Committee; and Senator Rodriguez and others
SUBJECT:	Abatement of Ad Valorem Taxes and Non-ad Valorem Assessments for Residential Improvements Destroyed Due to a Sudden and Unforeseen Collapse
DATE:	March 2, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	**Favorable**
2.	Gross	Babin	FT	**Fav/CS**
3.	Gross	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1610 provides property tax relief to parcel owners affected by a sudden and unforeseen collapse of a residential building. The bill requires the tax collector to abate all property taxes and non-ad valorem assessments for each affected parcel and the property appraiser must notify all parcel owners of the abatement. Parcel owners are not required to remit payment and tax collectors and property appraisers may not issue tax notices.

The section of the Florida Statutes being created by the bill is repealed December 31, 2023, unless reenacted by the Legislature.

The Revenue Estimating Conference estimated that the bill will reduce local property tax revenue by $0.8 million in Fiscal Year 2022-2023 and by an insignificant amount each year thereafter. School district revenue is estimated to decrease by $0.3 million in Fiscal Year 2022-2023.

The bill takes effect upon becoming a law and applies retroactively to January 1, 2021.

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or "property tax" is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.[1] The property appraiser annually determines the assessed or "just value"[2] of property within the taxing jurisdiction and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's "taxable value."[3] Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes[4] and limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.[5]

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;[6] however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include: agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes; land used for conservation purposes; historic properties when authorized by the county or municipality; and certain working waterfront property.[7]

Tax Abatement for Natural Disasters

The Legislature has provided tax relief for property damaged by natural disasters on at least five occasions.[8] In 1988, the Legislature provided an abatement of taxes for properties damaged by windstorms or tornadoes.[9] To receive the abatement, the property owner was required to file an application with the property appraiser by March 1 of the year following the year in which the windstorm or tornado occurred.[10] After making a determination on the validity of the application, the property appraiser was directed to issue an official statement to the tax collector containing the number of months the property was uninhabitable due to the damage or

[1] Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

[2] Property must be valued at "just value" for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm's-length transaction. *See Walter v. Shuler,* 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey,* 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County,* 275 So. 2d 4 (Fla. 1973).

[3] *See* s. 192.001(2) and (16), F.S.

[4] FLA. CONST. art. VII, s. 1(a).

[5] *See* FLA. CONST. art. VII, s. 4.

[6] Section 193.011(2), F.S.

[7] FLA. CONST. art. VII, s. 4.

[8] Chapters 88-101, 98-185, 2004-474, 2007-106, and 2018-118, Laws of Fla.

[9] Section 196.295(3), F.S., repealed by ch. 92-173, s. 8, Laws of Fla.

[10] Section 196.295(3)(a), F.S., repealed by ch. 92-173, s. 8, Laws of Fla.

destruction, the value of the property prior to the damage or destruction, the total taxes due on the property as reduced by the number of months the property was uninhabitable, and the amount of the reduction in taxes.[11]

Upon receipt of the official statement, the tax collector reduced the amount of taxes due on the property on the tax collection roll and informed the board of county commissioners and the Department of Revenue (DOR) of the total reduction in taxes for all property in the county receiving the abatement.[12] The law was applied retroactively to January 1, 1988, and included a repeal effective July 1, 1989.[13] The language was removed from statute in 1992.[14]

Most recently, the Legislature applied a similar process to abate taxes for homestead parcels damaged or destroyed by Hurricanes Hermine and Matthew in 2016 or Hurricane Irma in 2017. If the residential improvement was rendered uninhabitable for at least 30 days due to such a hurricane, taxes initially levied in 2019 could be abated.[15] The Legislature was required to appropriate funds to fiscally constrained counties to offset the reduction in ad valorem tax revenue resulting from the abatement.[16]

The Value Adjustment Board Process

Each county has a Value Adjustment Board (VAB), comprised of two members of the governing body of the county, one member of the school board, and two citizen members appointed by the governing body of the county.[17] The county clerk acts as the clerk of the VAB.[18] A property owner may initiate an assessment valuation challenge by filing a petition with the clerk of the VAB within 25 days after the mailing of the TRIM notice.[19]

The clerk of the VAB will schedule the petition for a hearing, during which a special magistrate will hear testimony and make a recommendation to the VAB on how the petition should be resolved.[20] The VAB renders a written decision within 20 calendar days after the last day the VAB is in session.[21] The decision of the VAB must contain findings of fact and conclusions of law and must include reasons for upholding or overturning the determination of the property appraiser.[22] The clerk of the VAB, upon issuance of a decision, must notify each taxpayer and the property appraiser of the decision of the VAB.[23]

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[11] Section 196.295(3)(d), F.S., repealed by ch. 92-173, s. 8, Laws of Fla.
[12] Section 196.295(3)(e)-(f), F.S., repealed by ch. 92-173, s. 8, Laws of Fla.
[13] Section 196.295(3)(h), F.S., repealed by ch. 92-173, s. 8, Laws of Fla.
[14] Chapter 92-173, s. 8, Laws of Fla.
[15] Chapter 2018-118, s. 17, Laws of Fla. enacting s. 197.318, F.S.
[16] Section 218.135, F.S., (2018) (Repealed 2019).
[17] Section 194.015, F.S.
[18] *Id.*
[19] Section 194.011(3)(d), F.S. With respect to an issue involving the denial of an exemption, an agricultural or high-water recharge classification application, an application for classification as historic property used for commercial or certain nonprofit purposes, or a deferral, the petition must be filed at any time during the taxable year on or before the 30th day following the mailing of the notice by the property appraiser.
[20] Section 194.035, F.S.
[21] Section 194.034(2), F.S.
[22] *Id.*
[23] *Id.*

Champlain Towers South

On the morning of June 24, 2021, a 12-story condominium in Surfside, Florida unexpectedly experienced structural failure and partially collapsed, resulting in the death of ninety-eight people. The standing portion of the building, rendered uninhabitable, was demolished 10 days later.

Alongside an extensive emergency management effort, the Governor issued Executive Order 21-160 to suspend deadlines related to property tax administration for taxpayers whose property was destroyed or rendered uninhabitable by the collapse.[24] The suspensions include deadlines regarding the notification and collection of ad valorem taxes. The executive order also requested "the Florida Legislature to explore additional legislative acts as may be necessary to alleviate the taxpayers' property tax obligations."[25]

III. Effect of Proposed Changes:

The bill creates s. 197.319, F.S., to provide tax relief to parcel owners affected by a sudden and unforeseen collapse of a residential building. The bill requires the tax collector to abate all taxes and non-ad valorem assessments for destroyed parcels and the property appraiser must notify the owners of the abatement.

The bill defines "residential improvement" to mean a multistory residential building comprised of at least 50 dwelling units. The condition of the residential improvement on the January 1 of the year the property was destroyed must have been in such a state that the residential improvement had no value due to a latent defect of the property not readily discernable by inspection.

Parcel owners whose property tax is abated are not required to make a payment and property appraisers and tax collectors are prohibited from issuing tax notices.

The bill requires value adjustment boards to dismiss petitions from parcel owners challenging the value of the parcel for the year of the collapse.

For purposes of determining the "Save Our Homes" assessment limitation for property newly homesteaded by an affected parcel owner, the property appraiser shall look to the just value and assessed value of the destroyed parcel on the January 1 of the year preceding the year of the destruction.

The bill requires tax collectors to refund tax payments made for taxes levied in the year of collapse.

The section of the Florida Statutes being created by the bill is repealed December 31, 2023, unless reenacted by the Legislature.

[24] Executive Order 21-160, Office of the Governor, Jul. 9, 2021, *available at:* https://www.flgov.com/wp-content/uploads/2021/07/EO-21-160.pdf (last visited January 20, 2022).
[25] *Id.*, s.2.

The bill takes effect upon becoming a law and applies retroactively to January 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 (b) of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirement does not apply to laws having an insignificant impact,[26, 27] which for Fiscal Year 2022-2023, is forecast at $2.3 million.[28]

The Revenue Estimating Conference's estimate of the reduction to local property tax revenue is less than $2.3 million. Therefore, this bill is not a mandate subject to the provisions of Article VII, s. of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

This bill does not create or raise a state tax or fee. Therefore, the requirements of Article VII, s. 19 of the Florida Constitution do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference estimated that the bill will reduce local property tax revenue by $0.8 million in Fiscal Year 2022-2023 and by an insignificant amount each

[26] FLA. CONST. art. VII, s. 18(d).
[27] 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 Jan. 26, 2022).
[28] Based on the Demographic Estimating Conference's population estimates adopted on March 3, 2021. The conference packet is *available at* http://edr.state.fl.us/Content/conferences/population/archives/210303demographic.pdf (last visited Jan. 26, 2022).

year thereafter. School district revenue is estimated to decrease by $0.3 million in Fiscal Year 2022-2023.

B. Private Sector Impact:

Property owners who apply for and receive the tax abatement authorized by the bill will benefit by a reduced tax burden.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 197.319 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on February 28, 2022:
The committee substitute makes technical changes to clarify that a property appraiser should look to the value of the destroyed parcel to determine the Save Our Homes benefit that can be transferred to a new homestead. The CS clarifies that eligible persons may receive a refund of non-ad valorem assessments, along with property taxes.

CS by Finance and Tax on February 10, 2022:
The CS:

- Abates all taxes and non-ad valorem assessments for property destroyed by a sudden and unforeseen collapse.
- Defines a residential improvement as a multistory residential building consisting of at least 50 dwelling units.
- Requires the condition of the building on the January 1 immediately preceding the collapse to have had no value due to a latent defect not readily discernable by inspection.
- Does not require parcel owners to remit a payment.
- Prohibits property appraisers and tax collectors to issue tax notices.

- Requires the property appraiser to notify the taxpayer that all taxes and non-ad valorem assessments have been abated for the year in which the property was destroyed.
- Requires the value adjustment board to dismiss petitions pertaining to a challenge by a parcel owner.
- Instructs property appraisers to use the values from the year before the collapse to determine the assessed value for those who establish a new homestead and wish to transfer their "Save Our Homes" benefit to the new property.
- Requires tax collectors to refund any payments made for the taxes levied in the year in which the property collapsed.
- Repeals this section December 31, 2023, unless reviewed and saved from repeal.

B. Amendments:

None.

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

445234

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2022	.	
	.	
	.	
	.	

The Committee on Appropriations (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Delete lines 68 - 70

and insert:

value and assessed value of the destroyed parcel on the January 1 of the year preceding the year of the destruction must be used.

(4) Tax payments received by the tax collector for taxes and non-ad valorem assessments

445234

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 2 - 5
and insert:
An act relating to taxation; creating s. 197.319, F.S.; defining the term

By the Committee on Finance and Tax; and Senators Rodriguez and Pizzo

593-02948-22 20221610c1

A bill to be entitled

An act relating to abatement of ad valorem taxes and non-ad valorem assessments for residential improvements destroyed due to a sudden and unforeseen collapse; creating s. 197.319, F.S.; defining the term "residential improvement"; providing for the eligibility for abatement of ad valorem taxes and non-ad valorem assessments for residential improvements destroyed following certain events; requiring property appraisers to provide specified statements to tax collectors; providing that owners of parcels meeting certain requirements are not required to remit payments; prohibiting property appraisers and tax collectors from issuing specified notices for parcels meeting certain requirements; requiring property appraisers to notify taxpayers of the abatement of taxes and non-ad valorem assessments under certain circumstances; requiring value adjustment boards to dismiss petitions under certain circumstances; specifying requirements for determining the assessed value of certain new homesteads; providing for a refund of taxes for parcels meeting certain requirements under certain circumstances; providing for future repeal; providing for retroactive application; providing an effective date.

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

Section 1. Section 197.319, Florida Statutes, is created to

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

593-02948-22 20221610c1

read:

197.319 Abatement of ad valorem taxes and non-ad valorem assessments following destruction caused by a sudden and unforeseen collapse.—

(1) As used in this section, the term "residential improvement" means a multistory residential building that consists of at least 50 dwelling units.

(2) Each parcel owned and assessed as homestead property under s. 193.155 or as nonhomestead residential property under s. 193.1554 which is within a residential improvement that is destroyed due to a sudden and unforeseen collapse of the residential improvement or due to the subsequent demolition of the residential improvement after such collapse is eligible for an abatement of all taxes and non-ad valorem assessments for the year in which the destruction occurred if the property appraiser determines that the condition of the residential improvement on the January 1 immediately preceding the collapse was such that the residential improvement had no value due to a latent defect of the property not readily discernable by inspection.

(a) The property appraiser shall provide to the tax collector an official written statement that provides the information necessary for the tax collector to abate the taxes and non-ad valorem assessments for each parcel owner.

(b) For parcels meeting the requirements of this subsection, a parcel owner is not required to remit a payment, the property appraiser may not issue a notice of proposed property taxes pursuant to s. 200.069, and the tax collector may not issue a tax notice pursuant to s. 197.322. In lieu of the notice of proposed property taxes, the property appraiser must

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

notify the taxpayer that all taxes and non-ad valorem assessments have been abated for the year in which the property was destroyed. If a parcel owner files a petition to the value adjustment board concerning the value of the parcel for the year of the collapse, the value adjustment board must dismiss the petition.

(3) For purposes of determining the assessed value under s. 193.155(8) of a new homestead established by an owner of a parcel within the destroyed residential improvement, the just value and assessed value of the parcel on the January 1 of the year preceding the year of the destruction must be used.

(4) Tax payments received by the tax collector for taxes levied in the year of collapse on parcels meeting the requirements of subsection (2) are eligible for a refund upon application made to the tax collector. For purposes of this subsection, the parcel owner or the parcel owner's legal representative may apply for a refund.

(5) This section is repealed December 31, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. This act applies retroactively to January 1, 2021.

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 Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 16, 2022

I respectfully request that **Senate Bill #1610**, relating to Abatement of Ad Valorem Taxes and Non-ad Valorem Assessments for Residential Improvements Destroyed Due to a Sudden and Unforeseen Collapse, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

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 Appropriations

BILL:	CS/CS/SB 1670
INTRODUCER:	Appropriations Committee; Military and Veterans Affairs, Space, and Domestic Security Committee; and Senator Hutson
SUBJECT:	Cybersecurity
DATE:	March 2, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Caldwell	MS	**Fav/CS**
2.	Hunter	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1670 modifies cybersecurity training and reporting standards for state agencies and local governments.

The State Cybersecurity Act requires the Florida Digital Service (FLDS) and the heads of state agencies to meet certain requirements to enhance the cybersecurity of state agencies. Currently, state agencies must provide cybersecurity training to their employees, report cybersecurity incidents, and adopt cybersecurity standards. However, there are no such requirements for counties and municipalities (local governments).

Current law regarding state or local government cybersecurity does not specifically address ransomware, which is a form of malware designed to encrypt files on a device, rendering any files unusable. Malicious actors then demand ransom in exchange for decryption.

The bill prohibits state agencies and local governments from paying or otherwise complying with a ransomware incident.

The bill defines the severity level of a cybersecurity incident in accordance with the National Cyber Incident Response Plan. State agencies and local governments must report all ransomware incidents and high severity level cybersecurity incidents to the Cybersecurity Operations Center (CSOC) and the Cybercrime Office within the Florida Department of Law Enforcement as soon as possible but no later than a time certain. Local governments must also report to the sheriff.

The bill requires state agencies to report low level cybersecurity incidents and provides that local governments may report such incidents. The bill also requires state agencies and local governments to submit after-action reports to the FLDS following a cybersecurity or ransomware incident.

The bill requires the CSOC to notify the Legislature of high severity level cybersecurity incidents. The notice must contain a high-level overview of the incident and its likely effects. In addition, the CSOC must provide the Legislature and the Cybersecurity Advisory Council (CAC) with a consolidated incident report on a quarterly basis.

The bill requires state agency and local government employees to undergo certain cybersecurity training within 30 days of employment and annually thereafter.

The bill requires local governments to adopt cybersecurity standards that safeguard the local government's data, information technology (IT), and IT resources.

The bill expands the purpose of the CAC to include advising local governments on cybersecurity and requires the CAC to examine reported cybersecurity and ransomware incidents to develop best practice recommendations. The CAC must submit an annual comprehensive report regarding ransomware to the Governor and Legislature.

The bill establishes penalties and fines for certain ransomware offenses against a government entity.

The bill will likely have a negative fiscal impact on state and local government expenditures; however, the bill may also have a positive fiscal impact on the state due to the punitive fine established in the bill. See Fiscal Analysis & Economic Impact Statement.

The bill's effective date is July 1, 2022.

II. Present Situation:

General Background

Ransomware is a form of malware[1] that is used by malicious actors to encrypt files on devices, networks, or computer systems, rendering the files on those systems unusable. The malicious actors then demand ransom in exchange for decryption or the return of an individual's or an organization's files. Ransomware actors will also often threaten to sell or leak the data or information if the demanded ransom is not paid.

The number of ransomware incidents continues to rise, with 2,474 incidents reported with adjusted losses of over $29.1 million,[2] a figure that is likely under-inclusive, as technology

[1] "Malware" means hardware, firmware, or software that is intentionally included or inserted in a system for a harmful purpose. *See* *https://csrc.nist.gov/glossary/term/malware* (last visited Feb. 4, 2022).
[2] Federal Bureau of Investigation, Internet Crime Complaint Center, 2020 Internet Crime Report, Business Email Compromise (BEC), p.14, *available at* https://www.ic3.gov/Media/PDF/AnnualReport/2020_IC3Report.pdf (last visited Feb. 2, 2022).

experts believe that many ransomware attacks go unreported out of embarrassment by victims who decline to report. In its reporting, the Federal Bureau of Investigation (FBI) formally describes ransomware as:

> A type of malicious software, or malware, that encrypts data on a computer making it unusable. A malicious cybercriminal holds the data hostage until the ransom is paid. If the ransom is not paid, the victim's data remains unavailable. Cyber criminals may also pressure victims to pay the ransom by threatening to destroy the victim's data or to release it to the public.[3]

The Internet Crime Complaint Center (IC3), housed within the FBI received a record number of complaints from the American public in 2020: 791,790, with the reported losses attached to those complaints exceeding $4.1 billion.[4] This represents a 69 percent increase in total complaints from 2019.

Recent ransomware attacks that impacted the American economy include:

- The Colonial Pipeline shutdown in May 2021, which disrupted the flow of refined gasoline and jet fuel through 5,500 miles of pipeline from Texas to New York.[5]
  - Colonial supplied 45 percent of the East Coast's fuel supply.
  - As a private company, Colonial had no duty to report; however, the FBI and federal investigative agencies at the time did confirm involvement in the investigation.[6]
  - A ransom of 75 Bitcoin was paid a day after Colonial's network system was breached, and a total ransom, which was the equivalent of nearly $5 million in cryptocurrency was eventually paid for the software decryption key to unlock its networks.[7]
- JBS, the world's largest meat processing plant, was hit by a ransomware attack in June 2021:[8]
  - The plant is responsible for supplying one quarter of America's beef.[9]
  - The likely Russian-based hackers threatened disruption or deletion of network files unless a ransom was paid.
  - Ultimately, JBS paid a ransom in Bitcoin of $11 million to resolve the cyberattack.[10]

Specifically, in Florida, recent cybersecurity and ransomware incidents include:

- A February 2021 intrusion into the City of Oldsmar's water system. The remote hacker briefly increased the amount of sodium hydroxide (lye) from 100 parts per million to 11,100

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[3] *Id*.
[4] *Id*, p.3.
[5] David E. Sanger, et al, *Cyberattack forces a shutdown of a top U.S. Pipeline*, THE NEW YORK TIMES (May 13, 2021) *available at* https://www.nytimes.com/2021/05/08/us/politics/cyberattack-colonial-pipeline.html (last visited Feb. 2, 2022).
[6] *Id*.
[7, 8, 9] Associated Press, *Colonial Pipeline confirms it paid $4.4m to hacker gang after attack* (May 19, 2021), THE GUARDIAN, *available at* https://www.theguardian.com/technology/2021/may/19/colonial-pipeline-cyber-attack-ransom (last visited Jan. 23, 2022).
[8] *JBS: Cyber-Attack hits world's largest meat supplier*, BBC.COM, *available at* https://www.bbc.com/news/world-us-canada-57318965 (last visited Jan. 22, 2022).
[9] *Id*.
[10] *Meat Giant JBS pays $11m in ransom to resolve cyberattack*, BBC.COM, *available at* https://www.bbc.com/news/business-57423008 (last visited Jan. 23, 2022).

parts per million, more than 100 times the normal level. The increased amount was caught before the public was harmed.
- The St. Lucie County's Sheriff's Department was hit by a cyberattack in December 2020 when public records were taken and held for $1 million ransom and sheriff employees briefly resorted to filing reports using pen and paper instead.
- In Wakulla County in 2019, the school district's insurer paid a Bitcoin ransom to hackers to bring its computers back online during the first few weeks of the 2019-2020 school year.

Colonial Pipeline and JBS are just two examples from the thousands of other reports investigated by the IC3 in 2021. The United States is the number one target for cyberattacks with expected increases in both cyberattacks and particularly, ransomware attacks, according to statistics from the University of West Florida's Center for Cybersecurity.[11]

National Institute for Standards and Technology Cybersecurity Framework

The National Institute for Standards and Technology (NIST) is a non-regulatory federal agency housed within the United States Department of Commerce. The NIST is charged with providing a prioritized, flexible, repeatable, performance-based, and cost-effective framework that helps owners and operators of critical infrastructure identify, assess, and manage cyber risk. While the framework was developed with critical infrastructure in mind, it can be used by organizations in any sector of the economy or society.[12] The framework is designed to complement, and not replace, an organization's own unique approach to cybersecurity risk management. As such, there are a variety of ways to use the framework and the decision about how to apply it is left to the implementing organization. For example, an organization may use its current processes and consider the framework to identify opportunities to strengthen its cybersecurity risk management. Overall, the framework provides an outline of best practices that helps organizations decide where to focus resources for cybersecurity protection.[13]

National Cyber Incident Response Plan

The National Cyber Incident Response Plan (NCIRP) was developed according to the direction of Presidential Policy Directive (PPD)-41,[14] by the U.S. Department of Homeland Security. The NCIRP is part of the broader National Preparedness System and establishes the strategic framework for a whole-of-Nation approach to mitigating, responding to, and recovering from cybersecurity incidents posing risk to critical infrastructure.[15] The NCIRP is not a tactical or operational plan; rather, it serves as the primary strategic framework for stakeholders to understand how federal departments and agencies and other national-level partners provide resources to support response operations. The NCIRP was developed in coordination with

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[11] Eman El Sheikh, Ph.D., Center for Cybersecurity, University of West Florida, *Cybersecurity Education and Workforce Development Highlights (January 17, 2020 Presentation to Florida Cybersecurity Task Force Meeting, January 17, 2020), available at* CSTF_01.17.20_Meeting_Materials.pdf (myflorida.com) (last visited Jan. 23, 2022).
[12] National Institute of Standards and Technology, Framework for Improving Critical Infrastructure Cybersecurity, *available at* https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf (last visited Jan. 30, 2022).
[13] *Id.*
[14] Annex for PPD-41: *U.S. Cyber Incident Coordination*, *available at* https://obamawhitehouse.archives.gov/the-press-office/2016/07/26/annex-presidential-policy-directive-united-states-cyber-incident (last visited Feb. 18, 2022).
[15] U.S. Department of Homeland Security, *National Cyber Incident Response Plan* (December 2016) *available at file:///C:/Users/Villa.Chris/Downloads/798128% 20(7).pdf* (last visited Feb. 20, 2022).

federal, state, local, and private sector entities and is designed to interface with industry best practice standards for cybersecurity, including the NIST Cybersecurity Framework.

The NCIRP adopted a common schema for describing the severity of cybersecurity incidents affecting the U.S. The schema establishes a common framework to evaluate and assess cybersecurity incidents to ensure that all departments and agencies have a common view of the severity of a given incident; urgency required for responding to a given incident; seniority level necessary for coordinating response efforts; and level of investment required for response efforts.[16]

Figure 1: Cybersecurity Incident Severity Schema

Disaster Level	Cyber Incident Severity	Description
Level 1	Level 5 *Emergency*	Poses an imminent threat to the provision of wide-scale critical infrastructure services, national government security, or the lives of US citizens.
Level 2	Level 4 *Severe*	Likely to result in a significant impact to public health or safety, national security, economic security, foreign relations, or civil liberties.
	Level 3 *High*	Likely to result in a demonstrable impact to public health or safety, national security, economic security, foreign relations, civil liberties, or public confidence.
Level 3	Level 2 *Medium*	May impact public health or safety, national security, economic security, foreign relations, civil liberties, or public confidence.
	Level 1 *Low*	Unlikely to impact public health or safety, national security, economic security, foreign relations, civil liberties, or public confidence.

[16] *Id.*

Florida Information Protection Act of 2014

The *Florida Information Protection Act of 2014*[17] requires notice be given to affected customers and the Department of Legal Affairs (DLA) when a breach of personal information occurs. The notice must be provided within 30 days of the discovery of the breach or the belief that a breach has occurred, unless law enforcement has requested a delay for investigative purposes or for other good cause. State law requires Florida's Attorney General to file with the Legislature, every February 1st, a report identifying any governmental entities that have reported any breaches of security of themselves or by any of its third-party agents in the preceding calendar year. Additionally, the Attorney General must report on any breaches by any governmental entities affecting more than 500 individuals in this state as expeditiously as possible, but not later than 30 days after the determination of the breach or reason to believe the breach has occurred. An extension of up to 15 days may be granted if good cause is provided in writing to the DLA.

Enforcement authority is provided to the DLA under the Florida Deceptive and Unfair Trade Practices Act to prosecute violations. Violators may be subject to civil penalties if a breach notification is not provided on a timely basis, but there are not civil penalties for the timely report of a security breach. There are exceptions for those entities that are also required to report breaches to federal regulators.

Data Breach Reporting Within Florida Law

Florida is within the FBI's top ten states for total number of victims reporting a data breach for 2020, falling behind only California with 53,793 victims[18] and is fourth in the total amount of victim loss reported at $295 million for 2020.[19]

The Attorney General's office website posts notices and news releases relating to several multi-state settlements because of data breaches which are listed through litigation settlements and press releases on the site. [20]

Information Technology Management

The Department of Management Services (DMS)[21] oversees information technology (IT)[22] governance and security for the executive branch of state government. The Florida Digital Service (FLDS) within the DMS was established by the Legislature in 2020 to replace the

[17] Ch. 2014-189, Laws of Fla. (creating s. 501.171, F.S., effective July 1, 2014; Florida Information Protection Act).
[18] *Supra,* note 2.
[19] *Id.* at 24.
[20] Office of Attorney General Ashley Moody, *In the News – News Search (search conducted January 24, 2022), available at* http://www.myfloridalegal.com/newsrel.nsf/newsreleases (last visited Jan. 24, 2022).
[21] *See* s. 20.22, F.S.
[22] The term "information technology" means equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display , store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form. Section 282.0041(20), F.S. 12 Ch. 2020-161, Laws of Fla.

Division of State Technology.[23] The head of FLDS is appointed by the Secretary of Management Services[24] and serves as the state chief information officer (CIO).[25]

The FLDS was created to propose innovative solutions that securely modernize state government, including technology and information services, to achieve value through digital transformation and interoperability, and to fully support Florida's cloud first policy.[26] Accordingly, the DMS through the FLDS has the following powers, duties, and functions:

- Develop IT policy for the management of the state's IT resources.
- Develop an enterprise architecture.
- Establish project management and oversight standards with which state agencies[27] must comply when implementing IT projects.
- Perform project oversight on state agency IT projects that have a total cost of $10 million or more and that are funded in the General Appropriations Act or any other law.[28]
- Identify opportunities for standardization and consolidation of IT services that support interoperability, Florida's cloud first policy, and business functions and operations that are common across state agencies.[29]

State Cybersecurity Act

The State Cybersecurity Act[30] requires the DMS and the heads of state agencies[31] to meet certain requirements to enhance the cybersecurity[32] of state agencies. Specifically, the DMS, acting through the FLDS must:

- Establish standards and processes for assessing state agency cybersecurity risks and determining appropriate security measures consistent with generally accepted best practices for cybersecurity, including the NIST cybersecurity framework.

[23] Ch. 2020-161, Laws of Fla.
[24] The Secretary of Management Services serves as the head of the Department of Management Services (DMS) and is appointed by the Governor, subject to confirmation by the Senate. Section 20.22(1), F.S.
[25] Section 282.0051(2)(a), F.S.
[26] Section 282.0051(1), F.S.
[27] "State agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission. The term does not include university boards of trustees, state universities, the Department of Legal Affairs, the Department of Agriculture and Consumer Services, or the Department of Financial Services. Section 282.0041(33), F.S.
[28] For the Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services, Florida Digital Service (FLDS) provides project oversight on information technology (IT) projects that have a total cost of $20 million or more. Section 282.0051(1)(n), F.S.
[29] Section 282.0051(1), F.S.
[30] Section 282.318, F.S.
[31] For purposes of the State Cybersecurity Act, the term "state agency" includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services. Section 282.318(2), F.S.
[32] "Cybersecurity" means the protection afforded to an automated information system in order to attain the applicable objectives of preserving the confidentiality, integrity, and availability of data, information, and information technology resources. Section 282.0041(8), F.S.

- Adopt rules to mitigate risk, support a security governance framework, and safeguard state agency digital assets, data,[33] information, and IT resources[34] to ensure availability, confidentiality, and integrity.
- Designate a chief information security officer (CISO) responsible for the development, operation, and oversight of cybersecurity for state technology systems. The CISO must be notified of all confirmed or suspected incidents or threats of state agency IT resources and must report such information to the CIO and the Governor.
- Develop and annually update a statewide cybersecurity strategic plan that includes security goals and objectives for cybersecurity, including the identification and mitigation of risk, proactive protections against threats, tactical risk detection, threat reporting, and response and recovery protocols for cyber incidents.[35]
- Develop and publish for use by state agencies a cybersecurity governance framework.
- Assist state agencies in complying with the State Cybersecurity Act.
- In collaboration with the Cybercrime Office within the Florida Department of Law Enforcement (FDLE), annually provide training for state agency information security managers and computer security incident response team members that contains training on cybersecurity, including cybersecurity threats, trends, and best practices.
- Annually review the strategic and operational cybersecurity plans of state agencies.
- Track, in coordination with agency inspectors general, state agencies' implementation of remediation plans.
- Provide cybersecurity training to all state agency technology professionals that develops, assesses, and documents competencies by role and skill level. The training may be provided in collaboration with the Cybercrime Office, a private sector entity, or an institution of the state university system.
- Operate and maintain a Cybersecurity Operations Center led by the CISO to serve as a clearinghouse for threat information and to coordinate with the FDLE to support state agency response to cybersecurity incidents.
- Lead an Emergency Support Function under the state comprehensive emergency management plan.[36]

The State Cybersecurity Act requires the head of each state agency to designate an information security manager to administer the cybersecurity program of the state agency.[37] In addition, the head of each state agency must:

- Establish an agency cybersecurity incident response team in consultation with FLDS and the Cybercrime Office. The agency cybersecurity incident response team must convene upon notification of a cybersecurity incident and must immediately report all confirmed or suspected incidents to the CISO.

[33] "Data" means a subset of structured information in a format that allows such information to be electronically retrieved and transmitted. Section 282.0041(9), F.S.
[34] "Information technology resources" means data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance, and training. Section 282.0041(22), F.S.
[35] "Incident" means a violation or imminent threat of violation, whether such violation is accidental or deliberate, of information technology resources, security, policies, or practices. An imminent threat of violation refers to a situation in which the state agency has a factual basis for believing that a specific incident is about to occur.
Section 282.0041(19), F.S.
[36] Section 282.318(3), F.S.
[37] Section 282.318(4)(a), F.S.

- Annually submit to the DMS the state agency's strategic and operational cybersecurity plans.
- Conduct and update every three years a comprehensive risk assessment to determine the security threats to the data, information, and IT resources of the state agency.
- Develop and periodically update written internal policies and procedures, including procedures for reporting cybersecurity incidents and breaches to the FLDS and the Cybercrime Office.
- Implement managerial, operational, and technical safeguards and risk assessment remediation plans recommended by the DMS to address identified risks to the data, information, and IT resources of the agency.
- Ensure that periodic internal audits and evaluations of the agency's cybersecurity program for the data, information, and IT resources of the agency are conducted.
- Ensure that the cybersecurity requirements included as written specifications within a solicitation, contract, and service-level agreement of IT and IT resources and services meet or exceed applicable state and federal laws, regulations, and standards for cybersecurity, including the NIST cybersecurity framework.
- Provide cybersecurity awareness training to all state agency employees within 30 days of commencing employment concerning cybersecurity risks and the responsibility of employees to comply with policies, standards, guidelines, and operating procedures adopted by the state agency to reduce those risks. The training may be provided in collaboration with the Cybercrime Office, a private sector entity, or an institution of the state university system.
- Develop a process that is consistent with the rules and guidelines established by the FLDS for detecting, reporting, and responding to threats, breaches, or cybersecurity incidents.[38]

Florida Cybersecurity Advisory Council

The Florida Cybersecurity Advisory Council (CAC) within the DMS[39] assists state agencies in protecting IT resources from cyber threats and incidents.[40] The CAC must assist the FLDS in implementing best cybersecurity practices, taking into consideration the final recommendations of the Florida Cybersecurity Task Force – a task force created to review and assess the state's cybersecurity infrastructure, governance, and operations.[41] The CAC meets at least quarterly to:

- Review existing state agency cybersecurity policies.
- Assess ongoing risks to state agency IT.
- Recommend a reporting and information sharing system to notify state agencies of new risks.
- Recommend data breach simulation exercises.
- Assist the FLDS in developing cybersecurity best practice recommendations for state agencies, including continuous risk monitoring, password management, and protecting data in legacy and new systems.
- Examine inconsistencies between state and federal law regarding cybersecurity.[42]

The CAC must work with the NIST and other federal agencies, private sector businesses, and private security experts to identify which local infrastructure sectors, not covered by federal law,

[38] Section 282.318(4), F.S.
[39] Section 282.319(1), F.S.
[40] Section 282.319(2), F.S.
[41] Section 282.319(3), F.S.
[42] Section 282.319(9), F.S.

are at the greatest risk of cyber-attacks and to identify categories of critical infrastructure as critical cyber infrastructure if cyber damage to the infrastructure could result in catastrophic consequences.[43]

Beginning June 30, 2022, and each June 30 thereafter, the CAC must submit to the Legislature any recommendations considered necessary by the CAC to address cybersecurity.[44]

Offenses against Users of Computers

Florida law criminalizes the following acts involving a computer,[45] computer system,[46] computer network,[47] or electronic device[48] when done knowingly, willfully, and without authorization:

- Accessing[49] or causing to be accessed any computer, computer system, computer network, or electronic device with knowledge that such access is unauthorized or the manner or use exceeds authorization.
- Disrupting or denying the ability to transmit data to or from an authorized user of a computer, computer system, computer network, or electronic device under certain circumstances.
- Destroying, taking, injuring, or damaging computers, computer systems, computer networks, or electronic devices.
- Introducing a computer contaminant into a computer, computer system, computer network, or electronic device.
- Engaging in audio or video surveillance of an individual by accessing one of the inherent features or components of a computer, computer system, computer network, or electronic device, including accessing the data or information stored by a third party.[50]

[43] Section 282.319(10), F.S.
[44] Section 282.319(11), F.S.
[45] "Computer" means an internally programmed, automatic device that performs data processing. Section 815.03(2), F.S.
[46] "Computer system" means a device or collection of devices, including support devices, one or more of which contain computer programs, electronic instructions, or input data and output data, and which perform functions, including, but not limited to, logic, arithmetic, data storage, retrieval, communication, or control. The term does not include calculators that are not programmable and that are not capable of being used in conjunction with external files. Section 815.03(7), F.S.
[47] "Computer network" means a system that provides a medium for communication between one or more computer systems or electronic devices, including communication with an input or output device such as a display terminal, printer, or other electronic equipment that is connected to the computer systems or electronic devices by physical or wireless telecommunication facilities. Section 815.03(4), F.S.
[48] "Electronic device" means a device or a portion of a device that is designed for and capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data, including, but not limited to, a cellular telephone, tablet, or other portable device designed for and capable of communicating with or across a computer network and that is actually used for such purpose. Section 815.03(9), F.S.
[49] "Accessing" means approaching, instructing, communicating with, storing data in, retrieving data from, or otherwise making use of any resources of a computer, computer system, computer network, or electronic device. Section 815.03(1), F.S.
[50] Section 815.06(2), F.S.

In general, such conduct against a computer user is a third degree felony,[51] punishable by up to five years in prison and a $5,000 fine.[52] However, the crime may be enhanced to a second[53] or first[54] degree felony with aggravating factors, such as excessive damage or endangering a human life.[55]

Unfunded Local Government Mandates

An unfunded mandate on local government is defined in Florida's Constitution as a general law which requires counties or municipalities to spend its funds, limits their ability to raise revenue, or limits their ability to receive sales tax revenue. Adopted by Florida voters in 1990, Article VII, Section 18(a) of the Florida Constitution states that no county or municipality shall be bound by any general law requiring such county or municipality to spend its funds or to take an action requiring the expenditure of funds except under certain conditions. The review process is only applied to general laws applicable to cities and counties and not to special districts or school districts.

Article VII, s. 18 of the Florida Constitution requires also that such laws fulfill an important state interest and meet one of the following conditions for constitutionality:

- The Legislature has provided or will provide the estimated amount of funds necessary to fund the mandated activity or program;
- The Legislature has provided or will provide the county or municipality the authorization to enact a funding source not available to them before February 1, 1989, that can be used to generate the amount of funds sufficient to meet the mandate by a simple majority vote for the governing body;
- The law passes by a two-thirds membership vote of each house of the Legislature;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or
- The law is required to comply with a federal requirement or is required to comply with a federal entitlement.

If none of the constitutional exceptions or exemptions apply, and if the bill becomes law, cities and counties are not bound by the law[56] unless the Legislature has determined that the bill fulfills an important state interest and approves the bill by a two-thirds vote of the membership of each house. A Legislature can meet the condition "meets an important state interest" through a legislative declaration and a declaratory statement that the legislation does meet an important state interest.

[51] Section 815.06(3)(a), F.S.
[52] Section 775.082 and 775.083, F.S.
[53] A second degree felony is punishable by up to 15 years in prison and a $10,000 fine. Sections 775.082 and 775.083, F.S.
[54] A first degree felony is punishable by up to 30 years in prison and a $10,000 fine. Sections 775.082 and 775.083, F.S.
[55] Section 815.06(3)(b) and (3)(c), F.S.
[56] Although the constitution says, "[n]o county or municipality shall be bound by any general law" that is a mandate, the circuit court's ruling was much broader in that it ordered SB 360 expunged completely from the official records of the state.

A mandate can still be prohibited if the effect of its enactment results in a reduction in the county or municipality's authority to raise total aggregate revenues or is a reduction in the total percentage share of revenue as it existed on February 1, 1989.

Mandates can be exempted in certain circumstances, such as, if the law is being enacted during a declared fiscal emergency, when offsetting revenues are provided for, or when the fiscal impact is considered insignificant. The Legislature interprets insignificant fiscal impact to mean an amount not greater than the average statewide population for the applicable fiscal year times 10 cents (currently $2.3 million); the average fiscal impact, including any offsetting effects over the long term, is also considered.[57]

III. Effect of Proposed Changes:

Ransomware Incident

The bill defines "ransomware incident" to mean a malicious cybersecurity incident in which a person or entity introduces software that gains unauthorized access to or encrypts, modifies, or otherwise renders unavailable a state agency's or local government's[58] data and thereafter the person or entity demands a ransom to restore access to the data, prevent publication of the data, or otherwise remediate the impact of the software. The bill prohibits a state agency or local government experiencing a ransomware incident from paying or otherwise complying with the demanded ransom.

Cybersecurity and Ransomware Incident Notification

The bill defines the severity level of a cybersecurity incident in accordance with the National Cyber Incident Response Plan (NCIRP) as follows:

- Level 5: An emergency-level incident within the specified jurisdiction if the incident poses an imminent threat to the provision of wide-scale critical infrastructure services; national, state, or local security; or the lives of the country's, state's, or local government's citizens.
- Level 4: A severe-level incident if the incident is likely to result in a significant impact within the affected jurisdiction which affects the public health or safety; national, state, or local security; economic security; or individual civil liberties.
- Level 3: A high-level incident if the incident is likely to result in a demonstrable impact in the affected jurisdiction to public health or safety; national, state, or local security; economic security; civil liberties; or public confidence.
- Level 2: A medium-level incident if the incident may impact public health or safety; national, state, or local security; economic security; civil liberties; or public confidence.
- Level 1: A low-level incident if the incident is unlikely to impact public health or safety; national, state, or local security; economic security; or public confidence.

[57] Guidelines issued in 1991 by then-Senate President Gwen Margolis and Speaker of the House Wetherell (1991); Comm. On Comprehensive Planning, Local and Military Affairs, The Florida Senate, *Review of Legislative Staff Guidelines for Screening Bills for Mandates on Florida Counties and Municipalities* (Interim Report 2000-24)(Sept. 1999), *available at* http://www.leg.state.fl.us/data/Publications/2000/Senate/reports/interim_reports/pdf/00-24ca.pdf (last visited Jan. 26, 2022).
[58] The bill defines "local government" to mean a county or a municipality.

The bill requires state agencies and local governments to report all ransomware incidents as soon as possible, but no later than 12 hours after discovery of the incident. It also requires state agencies and local governments to report cybersecurity incidents determined to be of severity level three, four, or five as soon as possible, but no later than 48 hours after discovery of the incident. Local governments may report cybersecurity incidents determined to be of severity level one or two and state agencies are required to report such incidents as soon as possible. State agencies and local governments report the incidents to the Cybersecurity Operations Center (CSOC) and Cybercrime Office; however, local governments are also required to report to the sheriff that has jurisdiction over the local government.

The bill specifies the information that must be reported in a cybersecurity or ransomware incident report by a state agency or local government. The incident report must include, at a minimum:

- A summary of the facts surrounding the cybersecurity or ransomware incident.
- The date on which the state agency or local government most recently backed up its data, the physical location of the backup, if the backup was affected, and if the backup was created using cloud computing.
- The types of data compromised by the cybersecurity or ransomware incident.
- The estimated fiscal impact of the cybersecurity or ransomware incident.
- In the case of a ransomware incident, the details of the ransom demanded.
- If the reporting entity is a local government, a statement requesting or declining assistance from the CSOC, Cybercrime Office, or sheriff.

The bill requires the CSOC to notify the President of the Senate and the Speaker of the House of Representatives of any cybersecurity incident with a severity level of three, four, or five within 12 hours of receiving the state agency or local government incident report. The notification must include a high-level description of the incident and the likely effects. In addition, the CSOC must provide consolidated incident reports to the President of the Senate, Speaker of the House of Representatives, and Cybersecurity Advisory Council (CAC) on a quarterly basis. The consolidated incident reports to the CAC may not contain any state agency or local government name, network information, or system identifying information, but must contain sufficient relevant information to allow the CAC to fulfill its responsibilities.

After-action Reports

The bill requires state agencies and local governments to submit an after-action report to Florida Digital Service (FLDS) within one week of the remediation of a cybersecurity or ransomware incident. The after-action report must summarize the incident, the incident's resolution, and any insights gained as a result of the incident. By December 1, 2022, the FLDS must establish guidelines and processes for submitting after-action reports.

Cybersecurity Training

The bill requires the FLDS to develop a basic and advanced cybersecurity training curriculum. All local government employees with access to the local government's network must complete the basic training curriculum, and local government technology professionals and employees with access to highly sensitive information must complete the advanced training curriculum. The

trainings must be completed by employees within 30 days of commencing employment and on an annual basis thereafter. The bill authorizes the FLDS to provide the cybersecurity trainings in collaboration with the Cybercrime Office, a private sector entity, or an institution of the State University System.

The bill requires the advanced cybersecurity training currently provided by the FLDS to state agency technology professionals to be provided on an annual basis and to be provided to employees with access to highly sensitive information. In addition, state agency heads must provide the basic cybersecurity training that is currently provided to agency employees on an annual basis.

The bill requires the advanced cybersecurity training curriculum provided to certain state and local government employees to include training on the identification of each cybersecurity incident severity level.

Local Government Cybersecurity Standards

The bill requires local governments to adopt cybersecurity standards that safeguard the local government's data, IT, and IT resources to ensure availability, confidentiality, and integrity. The standards must be consistent with generally accepted best practices for cybersecurity, including the National Institute for Standards and Technology (NIST) cybersecurity framework. Counties with a population of 75,000 or more and municipalities with a population of 25,000 or more must adopt the standards by January 1, 2024. Counties with a population less than 75,000 and municipalities with a population less than 25,000 must adopt the standards by January 1, 2025. The bill requires each local government to notify the FLDS when it has adopted the standards.

Florida Cybersecurity Advisory Council

The bill provides that one of the purposes of the CAC is to advise local governments on cybersecurity, including cybersecurity threats, trends, and best practices. In addition, the bill requires the CAC to review information relating to cybersecurity and ransomware incidents reported by state agencies and local governments to determine commonalities and develop best practice recommendations for those entities. The CAC must recommend any additional information that should be reported by a local government to the FLDS as part of a cybersecurity or ransomware incident report.

Beginning December 1, 2022, and each December 1 thereafter, the CAC must prepare and submit a comprehensive report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that includes data, trends, analysis, findings, and recommendations for state and local action regarding ransomware incidents. At a minimum, the report must include:

- Descriptive statistics, including the amount of ransom requested, duration of the incident, and overall monetary cost to taxpayers of the incident.
- A detailed statistical analysis of the circumstances that lead to the ransomware incident which does not include the name of the state agency or local government, network information, or system identifying information.

- Statistical analysis of the level of cybersecurity employee training and frequency of data backup for the state agencies or local governments that reported incidents.
- Specific issues identified with current policy, procedure, rule, or statute and recommendations to address those issues.
- Other recommendations to prevent ransomware incidents.
- The bill specifies that, for purposes of the CAC's charter, the term "state agency" includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services.

Ransomware Offense

The bill provides that a person who willfully, knowingly, and without authorization introduces a computer contaminant that gains unauthorized access to, encrypts, modifies, or otherwise renders unavailable data, programs, or supporting documentation residing or existing within a computer, computer system, computer network, or electronic device owned or operated by a government entity46 and demands a ransom to prevent the publication of or restore access to the data, programs, or supporting documentation or to otherwise remediate the impact of the computer contaminant commits a ransomware offense. The bill provides that a ransomware offense is punishable as a first degree felony. The bill further provides that an employee or contractor of a government entity, with access to the government entity's network, who willfully and knowingly aids or abets another in the commission of a ransomware offense against the government entity commits a felony of the first degree. In addition to any other penalties imposed, the convicted person must pay a fine equal to twice the amount demanded in the ransomware offense, the proceeds of which will be deposited into the General Revenue Fund.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because the bill places cybersecurity related requirements on local governments, including completing cybersecurity trainings, adopting cybersecurity standards, reporting ransomware and certain cybersecurity incidents, and submitting after-action reports; however, an exemption may apply if the costs related to those cybersecurity requirements are insignificant. An exception may apply because similarly situated entities are required to comply with the same cybersecurity requirements and the bill provides an important state interest determination. An exception may also apply because the General Appropriations Act provides estimated funds to cover the mandate.

The fiscal impact to the local governments is indeterminate as the number of impacted individuals is unknown.

The bill does not clearly define which entities within local government are covered by the requirements. For Fiscal Year 2020-2021, the total FTEs employed in Florida's 67

counties was reported as 158,685[59] and, for municipal governments, the total FTEs reported was 107,137.[60]

Expenditure of funds would be required of all counties and local governments similarly situated in that all counties and local governments would be required to comply in the same manner, which may remove the local mandate issue. Additionally, the fiscal impact to the local government may be insignificant depending on the format and type of training developed. Whether this requirement would meet the threshold to be considered a mandate is indeterminate.

The bill includes a statement 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:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There is an indeterminate fiscal impact associated with providing the training to local government employees. The cost will be determined by the format and delivery of the training, as well as the number of individuals out of the total county or local government

[59] Office of Economic and Demographic Research, *Local Government Financial Reports, County Government Reports, 2020 Reporting Cycle Results*, pg. 12, *available at* http://edr.state.fl.us/Content/local-government/local-govt-reporting/2020CountyReport-DataSetwithMetrics.pdf (last visited Feb. 8, 2022).
[60] Office of Economic and Demographic Research, *Local Government Financial Reports, Municipal Government Reports, 2020 Reporting Cycle Results*, pg. 67, *available at* http://edr.state.fl.us/Content/local-government/local-govt-reporting/2020MunicipalReport-DataSetwithMetrics.pdf (last visited Feb. 8, 2022).

workforce that would be required to participate in either the new employee component or the annual training.

There may be long-term indeterminate savings in funds and resources to the state, local, or county governments if the cybersecurity trainings result in fewer cybersecurity attacks, reductions in the loss of data, or mitigation of third party computer breaches.

VI. Technical Deficiencies:

In describing the types of training to be delivered to local government employees, Section 2 of the bill does not define "persons with access to highly sensitive information" who would undergo additional training.

It is also unclear as to who is responsible for the delivery of the referenced cybersecurity training. Section (2) states that the Florida Digital Service may provide the training in collaboration with other defined entities. The statement implies that the Florida Digital Service is tasked with providing the training to applicable local government employees.

VII. Related Issues:

The bill requires that training be created and provided for certain employees of state and local government. The definition of local government is not provided. State statutes provide several provisions or definitions of "local government" depending on the context or legislative intent, which include or exclude other public institutions, such as schools, higher education entities, special districts, or councils.

VIII. Statutes Affected:

This bill substantially amends section 282.318 of the Florida Statutes.

This bill creates section 282.3185 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on February 28, 2022:
The committee substitute:

- Requires state agencies and local government entities to report cybersecurity and ransomware incidents to the Cybersecurity Operations Center (CSOC) and the Cybercrime office of the Department of Law Enforcement;
- Defines the level of severity of a cybersecurity incident in accordance with the U.S. Department of Homeland Security's National Cyber Incident Response Plan;
- Requires the advanced cybersecurity training offered to specified state agency and local government employees to include training on the cybersecurity incident severity levels;

- Differentiates reporting requirements based on the level of severity of a cybersecurity incident;
- Requires the Legislature to only be notified of high severity level cybersecurity incidents;
- Requires the CSOC to provide the Legislature and Cybersecurity Advisory Council (CAC) with a consolidated incident report on a quarterly basis;
- Requires local government entities to adopt cybersecurity standards that align with the National Institute for Standards and Technology and to provide notification to the Florida Digital Service when such standards are adopted;
- Expands the purpose of the CAC to include advising local governments on cybersecurity and requires the CAC to examine reported cybersecurity and ransomware incidents to develop best practice recommendations;
- Requires the CAC to submit an annual comprehensive report regarding ransomware to the Governor and Legislature; and
- Establishes penalties and fines for certain ransomware offenses against a government entity.

CS by Military and Veterans Affairs, Space, and Domestic Security on February 8, 2022:

The Committee adopted a CS which:

- Modifies s. 282.318, F.S., to direct the Florida Digital Service (FDS) to provide cybersecurity training for all state agency technology employees and employees with access to highly sensitive information within the first 30 days of employment and then annually thereafter;
- Defines "local government" to mean any county or municipality";
- Creates s. 282.3185, F.S., and directs FDS to develop a basic and advanced cybersecurity training curriculum for local government employees with access to the local network or have access to highly sensitive information for completion within 30 days of employment and then annually thereafter; and
- Allows training to be provided by the Cybercrime Office of the FDLE, a private sector entity, or an institution of the state university system.

The CS includes a statement that the Legislature finds that the act fulfills an important state interest.

The effective date of the act is July 1, 2022.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2022	.	
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The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present subsections (28) through (37) of section 282.0041, Florida Statutes, are redesignated as subsections (29) through (38), respectively, a new subsection (28) is added to that section, and subsection (19) of that section is amended, to read:

282.0041 Definitions.—As used in this chapter, the term:

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(19) "Incident" means a violation or imminent threat of violation, whether such violation is accidental or deliberate, of information technology resources, security, policies, or practices. An imminent threat of violation refers to a situation in which a ~~the~~ state agency, county, or municipality has a factual basis for believing that a specific incident is about to occur.

(28) "Ransomware incident" means a malicious cybersecurity incident in which a person or entity introduces software that gains unauthorized access to or encrypts, modifies, or otherwise renders unavailable a state agency's, county's, or municipality's data and thereafter the person or entity demands a ransom to prevent the publication of the data, restore access to the data, or otherwise remediate the impact of the software.

Section 2. Paragraphs (c) and (g) of subsection (3) and paragraphs (i) and (j) of subsection (4) of section 282.318, Florida Statutes, are amended, and paragraph (k) is added to subsection (4) of that section, to read:

282.318 Cybersecurity.—

(3) The department, acting through the Florida Digital Service, is the lead entity responsible for establishing standards and processes for assessing state agency cybersecurity risks and determining appropriate security measures. Such standards and processes must be consistent with generally accepted technology best practices, including the National Institute for Standards and Technology Cybersecurity Framework, for cybersecurity. The department, acting through the Florida Digital Service, shall adopt rules that mitigate risks; safeguard state agency digital assets, data, information, and



information technology resources to ensure availability, confidentiality, and integrity; and support a security governance framework. The department, acting through the Florida Digital Service, shall also:

(c) Develop and publish for use by state agencies a cybersecurity governance framework that, at a minimum, includes guidelines and processes for:

1. Establishing asset management procedures to ensure that an agency's information technology resources are identified and managed consistent with their relative importance to the agency's business objectives.

2. Using a standard risk assessment methodology that includes the identification of an agency's priorities, constraints, risk tolerances, and assumptions necessary to support operational risk decisions.

3. Completing comprehensive risk assessments and cybersecurity audits, which may be completed by a private sector vendor, and submitting completed assessments and audits to the department.

4. Identifying protection procedures to manage the protection of an agency's information, data, and information technology resources.

5. Establishing procedures for accessing information and data to ensure the confidentiality, integrity, and availability of such information and data.

6. Detecting threats through proactive monitoring of events, continuous security monitoring, and defined detection processes.

7. Establishing agency cybersecurity incident response



teams and describing their responsibilities for responding to cybersecurity incidents, including breaches of personal information containing confidential or exempt data.

8. Recovering information and data in response to a cybersecurity incident. The recovery may include recommended improvements to the agency processes, policies, or guidelines.

9. Establishing a cybersecurity incident reporting process that includes procedures ~~and tiered reporting timeframes~~ for notifying the department and the Department of Law Enforcement of cybersecurity incidents. ~~The tiered reporting timeframes shall be based upon the level of severity of the cybersecurity incidents being reported.~~

a. The level of severity of the cybersecurity incident is defined by the National Cyber Incident Response Plan of the United States Department of Homeland Security as follows:

(I) Level 5 is an emergency-level incident within the specified jurisdiction that poses an imminent threat to the provision of wide-scale critical infrastructure services; national, state, or local government security; or the lives of the country's, state's, or local government's residents.

(II) Level 4 is a severe-level incident that is likely to result in a significant impact in the affected jurisdiction to public health or safety; national, state, or local security; economic security; or civil liberties.

(III) Level 3 is a high-level incident that is likely to result in a demonstrable impact in the affected jurisdiction to public health or safety; national, state, or local security; economic security; civil liberties; or public confidence.

(IV) Level 2 is a medium-level incident that may impact



public health or safety; national, state, or local security; economic security; civil liberties; or public confidence.

(V) Level 1 is a low-level incident that is unlikely to impact public health or safety; national, state, or local security; economic security; civil liberties; or public confidence.

b. The cybersecurity incident reporting process must specify the information that must be reported by a state agency following a cybersecurity incident or ransomware incident, which, at a minimum, must include the following:

(I) A summary of the facts surrounding the cybersecurity incident or ransomware incident.

(II) The date on which the state agency most recently backed up its data, the physical location of the backup, if the backup was affected, and if the backup was created using cloud computing.

(III) The types of data compromised by the cybersecurity incident or ransomware incident.

(IV) The estimated fiscal impact of the cybersecurity incident or ransomware incident.

(V) In the case of a ransomware incident, the details of the ransom demanded.

c.(I) A state agency shall report all ransomware incidents and any cybersecurity incident determined by the state agency to be of severity level 3, 4, or 5 to the Cybersecurity Operations Center and the Cybercrime Office of the Department of Law Enforcement as soon as possible but no later than 48 hours after discovery of the cybersecurity incident and no later than 12 hours after discovery of the ransomware incident. The report



must contain the information required in sub-subparagraph b.

(II) The Cybersecurity Operations Center shall notify the President of the Senate and the Speaker of the House of Representatives of any severity level 3, 4, or 5 incident as soon as possible but no later than 12 hours after receiving a state agency's incident report. The notification must include a high-level description of the incident and the likely effects.

d. A state agency shall report a cybersecurity incident determined by the state agency to be of severity level 1 or 2 to the Cybersecurity Operations Center and the Cybercrime Office of the Department of Law Enforcement as soon as possible. The report must contain the information required in sub-subparagraph b.

e. The Cybersecurity Operations Center shall provide a consolidated incident report on a quarterly basis to the President of the Senate, the Speaker of the House of Representatives, and the Florida Cybersecurity Advisory Council. The report provided to the Florida Cybersecurity Advisory Council may not contain the name of any agency, network information, or system identifying information but must contain sufficient relevant information to allow the Florida Cybersecurity Advisory Council to fulfill its responsibilities as required in s. 282.319(9).

10. Incorporating information obtained through detection and response activities into the agency's cybersecurity incident response plans.

11. Developing agency strategic and operational cybersecurity plans required pursuant to this section.

12. Establishing the managerial, operational, and technical



safeguards for protecting state government data and information technology resources that align with the state agency risk management strategy and that protect the confidentiality, integrity, and availability of information and data.

13. Establishing procedures for procuring information technology commodities and services that require the commodity or service to meet the National Institute of Standards and Technology Cybersecurity Framework.

14. Submitting after-action reports following a cybersecurity incident or ransomware incident. Such guidelines and processes for submitting after-action reports must be developed and published by December 1, 2022.

(g) Annually provide cybersecurity training to all state agency technology professionals and employees with access to highly sensitive information which ~~that~~ develops, assesses, and documents competencies by role and skill level. The cybersecurity training curriculum must include training on the identification of each cybersecurity incident severity level referenced in sub-subparagraph (c)9.a. The training may be provided in collaboration with the Cybercrime Office of the Department of Law Enforcement, a private sector entity, or an institution of the State University System.

(4) Each state agency head shall, at a minimum:

(i) Provide cybersecurity awareness training to all state agency employees within ~~in the first~~ 30 days after commencing employment, and annually thereafter, concerning cybersecurity risks and the responsibility of employees to comply with policies, standards, guidelines, and operating procedures adopted by the state agency to reduce those risks. The training



may be provided in collaboration with the Cybercrime Office of the Department of Law Enforcement, a private sector entity, or an institution of the State University System.

(j) Develop a process for detecting, reporting, and responding to threats, breaches, or cybersecurity incidents which is consistent with the security rules, guidelines, and processes established by the department through the Florida Digital Service.

1. All cybersecurity incidents and ransomware incidents ~~breaches~~ must be reported by state agencies. Such reports ~~to the Florida Digital Service within the department and the Cybercrime Office of the Department of Law Enforcement and~~ must comply with the notification procedures and reporting timeframes established pursuant to paragraph (3)(c).

2. For cybersecurity breaches, state agencies shall provide notice in accordance with s. 501.171.

(k) Submit to the Florida Digital Service, within 1 week after the remediation of a cybersecurity incident or ransomware incident, an after-action report that summarizes the incident, the incident's resolution, and any insights gained as a result of the incident.

Section 3. Section 282.3185, Florida Statutes, is created to read:

282.3185 Local government cybersecurity.—

(1) SHORT TITLE.—This section may be cited as the "Local Government Cybersecurity Act."

(2) DEFINITION.—As used in this section, the term "local government" means any county or municipality.

(3) CYBERSECURITY TRAINING.—



(a) The Florida Digital Service shall:

1. Develop a basic cybersecurity training curriculum for local government employees. All local government employees with access to the local government's network must complete the basic cybersecurity training within 30 days after commencing employment and annually thereafter.

2. Develop an advanced cybersecurity training curriculum for local governments which is consistent with the cybersecurity training required under s. 282.318(3)(g). All local government technology professionals and employees with access to highly sensitive information must complete the advanced cybersecurity training within 30 days after commencing employment and annually thereafter.

(b) The Florida Digital Service may provide the cybersecurity training required by this subsection in collaboration with the Cybercrime Office of the Department of Law Enforcement, a private sector entity, or an institution of the State University System.

(4) CYBERSECURITY STANDARDS.—

(a) Each local government shall adopt cybersecurity standards that safeguard its data, information technology, and information technology resources to ensure availability, confidentiality, and integrity. The cybersecurity standards must be consistent with generally accepted best practices for cybersecurity, including the National Institute of Standards and Technology Cybersecurity Framework.

(b) Each county with a population of 75,000 or more must adopt the cybersecurity standards required by this subsection by January 1, 2024. Each county with a population of less than



75,000 must adopt the cybersecurity standards required by this subsection by January 1, 2025.

(c) Each municipality with a population of 25,000 or more must adopt the cybersecurity standards required by this subsection by January 1, 2024. Each municipality with a population of less than 25,000 must adopt the cybersecurity standards required by this subsection by January 1, 2025.

(d) Each local government shall notify the Florida Digital Service of its compliance with this subsection as soon as possible.

(5) INCIDENT NOTIFICATION.—

(a) A local government shall provide notification of a cybersecurity incident or ransomware incident to the Cybersecurity Operations Center, Cybercrime Office of the Department of Law Enforcement, and sheriff who has jurisdiction over the local government in accordance with paragraph (b). The notification must include, at a minimum, the following information:

1. A summary of the facts surrounding the cybersecurity incident or ransomware incident.

2. The date on which the local government most recently backed up its data, the physical location of the backup, if the backup was affected, and if the backup was created using cloud computing.

3. The types of data compromised by the cybersecurity incident or ransomware incident.

4. The estimated fiscal impact of the cybersecurity incident or ransomware incident.

5. In the case of a ransomware incident, the details of the



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ransom demanded.

6. A statement requesting or declining assistance from the Cybersecurity Operations Center, the Cybercrime Office of the Department of Law Enforcement, or the sheriff who has jurisdiction over the local government.

(b)1. A local government shall report all ransomware incidents and any cybersecurity incident determined by the local government to be of severity level 3, 4, or 5 as provided in s. 282.318(3)(c) to the Cybersecurity Operations Center, the Cybercrime Office of the Department of Law Enforcement, and the sheriff who has jurisdiction over the local government as soon as possible but no later than 48 hours after discovery of the cybersecurity incident and no later than 12 hours after discovery of the ransomware incident. The report must contain the information required in paragraph (a).

2. The Cybersecurity Operations Center shall notify the President of the Senate and the Speaker of the House of Representatives of any severity level 3, 4, or 5 incident as soon as possible but no later than 12 hours after receiving a local government's incident report. The notification must include a high-level description of the incident and the likely effects.

(c) A local government may report a cybersecurity incident determined by the local government to be of severity level 1 or 2 as provided in s. 282.318(3)(c) to the Cybersecurity Operations Center, the Cybercrime Office of the Department of Law Enforcement, and the sheriff who has jurisdiction over the local government. The report shall contain the information required in paragraph (a).



(d) The Cybersecurity Operations Center shall provide a consolidated incident report on a quarterly basis to the President of the Senate, the Speaker of the House of Representatives, and the Florida Cybersecurity Advisory Council. The report provided to the Florida Cybersecurity Advisory Council may not contain the name of any local government, network information, or system identifying information but must contain sufficient relevant information to allow the Florida Cybersecurity Advisory Council to fulfill its responsibilities as required in s. 282.319(9).

(6) AFTER-ACTION REPORT.—A local government must submit to the Florida Digital Service, within 1 week after the remediation of a cybersecurity incident or ransomware incident, an after-action report that summarizes the incident, the incident's resolution, and any insights gained as a result of the incident. By December 1, 2022, the Florida Digital Service shall establish guidelines and processes for submitting an after-action report.

Section 4. Section 282.3186, Florida Statutes, is created to read:

282.3186 Ransomware incident compliance.—A state agency as defined in s. 282.318(2), a county, or a municipality experiencing a ransomware incident may not pay or otherwise comply with a ransom demand.

Section 5. Subsection (2) of section 282.319, Florida Statutes, is amended, and paragraphs (g) and (h) are added to subsection (9) and subsections (12) and (13) are added to that section, to read:

282.319 Florida Cybersecurity Advisory Council.—

(2) The purpose of the council is to:



(a) Assist state agencies in protecting their information technology resources from cybersecurity ~~cyber~~ threats and incidents.

(b) Advise counties and municipalities on cybersecurity, including cybersecurity threats, trends, and best practices.

(9) The council shall meet at least quarterly to:

(g) Review information relating to cybersecurity incidents and ransomware incidents to determine commonalities and develop best practice recommendations for state agencies, counties, and municipalities.

(h) Recommend any additional information that a county or municipality should report to the Florida Digital Service as part of its cybersecurity incident or ransomware incident notification pursuant to s. 282.3185.

(12) Beginning December 1, 2022, and each December 1 thereafter, the council shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a comprehensive report that includes data, trends, analysis, findings, and recommendations for state and local action regarding ransomware incidents. At a minimum, the report must include:

(a) Descriptive statistics including the amount of ransom requested, duration of the ransomware incident, and overall monetary cost to taxpayers of the ransomware incident.

(b) A detailed statistical analysis of the circumstances that led to the ransomware incident which does not include the name of the state agency, county, or municipality; network information; or system identifying information.

(c) A detailed statistical analysis of the level of



cybersecurity employee training and frequency of data backup for the state agency, county, or municipality that reported the ransomware incident.

(d) Specific issues identified with current policies, procedures, rules, or statutes and recommendations to address such issues.

(e) Any other recommendations to prevent ransomware incidents.

(13) For purposes of this section, the term "state agency" has the same meaning as provided in s. 282.318(2).

Section 6. Section 815.062, Florida Statutes, is created to read:

815.062 Offenses against governmental entities.—

(1) As used in this section, the term "governmental entity" means any official, officer, commission, board, authority, council, committee, or department of the executive, judicial, or legislative branch of state government; any state university; or any county or municipality, special district, water management district, or other political subdivision of the state.

(2) A person who willfully, knowingly, and without authorization introduces a computer contaminant that gains unauthorized access to, encrypts, modifies, or otherwise renders unavailable data, programs, or supporting documentation residing or existing within a computer, computer system, computer network, or electronic device owned or operated by a governmental entity and demands a ransom to prevent the publication of or restore access to the data, programs, or supporting documentation or to otherwise remediate the impact of the computer contaminant commits a felony of the first degree,

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punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) An employee or contractor of a governmental entity with access to the governmental entity's network who willfully and knowingly aids or abets another in the commission of a violation of subsection (2) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) In addition to any other penalty imposed, a person convicted of a violation of this section must pay a fine equal to twice the amount of the ransom demand. Moneys recovered under this subsection shall be deposited into the General Revenue Fund.

Section 7. The Legislature finds and declares that this act fulfills an important state interest.

Section 8. 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 cybersecurity; amending s. 282.0041, F.S.; revising a definition and defining the term "ransomware incident"; amending s. 282.318, F.S.; requiring the Department of Management Services, acting through the Florida Digital Service, to develop and publish guidelines and processes for reporting cybersecurity incidents; requiring state agencies to report ransomware incidents and certain cybersecurity incidents to certain entities within specified



timeframes; requiring the Cybersecurity Operations Center to provide certain notifications to the Legislature within a specified timeframe; requiring the Cybersecurity Operations Center to quarterly provide certain reports to the Legislature and the Florida Cybersecurity Advisory Council; requiring the department, acting through the Florida Digital Service, to develop and publish guidelines and processes by a specified date for submitting after-action reports and annually provide cybersecurity training to certain persons; requiring state agency heads to annually provide cybersecurity awareness training to certain persons; requiring state agencies to report cybersecurity incidents and ransomware incidents in compliance with certain procedures and timeframes; requiring state agency heads to submit certain after-action reports to the Florida Digital Service within a specified timeframe; creating s. 282.3185, F.S.; providing a short title; defining the term "local government"; requiring the Florida Digital Service to develop certain cybersecurity training curricula; requiring certain persons to complete certain cybersecurity training within a specified timeframe and annually thereafter; authorizing the Florida Digital Service to provide a certain training in collaboration with certain entities; requiring certain local governments to adopt certain cybersecurity standards by specified dates; requiring local governments to provide a certain notification to



the Florida Digital Service and certain entities; providing notification requirements; requiring local governments to report ransomware incidents and certain cybersecurity incidents to certain entities within specified timeframes; requiring the Cybersecurity Operations Center to provide a certain notification to the Legislature within a specified timeframe; authorizing local governments to report certain cybersecurity incidents to certain entities; requiring the Cybersecurity Operations Center to quarterly provide certain reports to the Legislature and the Florida Cybersecurity Advisory Council; requiring local governments to submit after-action reports containing certain information to the Florida Digital Service within a specified timeframe; requiring the Florida Digital Service to establish certain guidelines and processes by a specified date; creating s. 282.3186, F.S.; prohibiting certain entities from paying or otherwise complying with a ransom demand; amending s. 282.319, F.S.; revising the purpose of the Florida Cybersecurity Advisory Council to include advising counties and municipalities on cybersecurity; requiring the council to meet at least quarterly to review certain information and develop and make certain recommendations; requiring the council to annually submit to the Governor and the Legislature a certain ransomware incident report beginning on a specified date; providing requirements for the report; defining the term “state agency”; creating s. 815.062,


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F.S.; defining the term "governmental entity"; prohibiting certain persons from introducing computer contaminants in order to procure a ransom; prohibiting certain employees or contractors from aiding or abetting another to introduce computer contaminants in order to procure a ransom; providing criminal penalties; requiring a person convicted of certain offenses to pay a certain fine; requiring deposit of certain moneys in the General Revenue Fund; providing a legislative finding and declaration of an important state interest; providing an effective date.

By the Committee on Military and Veterans Affairs, Space, and Domestic Security; and Senator Hutson

583-02823-22 20221670c1

A bill to be entitled

An act relating to cybersecurity; amending s. 282.318, F.S.; requiring the Department of Management Services, acting through the Florida Digital Service, to provide annual cybersecurity training to certain persons; requiring state agency heads to annually provide cybersecurity awareness training to certain persons; creating s. 282.3185, F.S.; defining the term "local government"; requiring the Florida Digital Service to develop certain cybersecurity training curricula; requiring certain persons to complete certain training within a specified period and annually thereafter; authorizing the Florida Digital Service to provide certain training in collaboration with certain entities; 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 (g) of subsection (3) and paragraph (i) of subsection (4) of section 282.318, Florida Statutes, are amended to read:

282.318 Cybersecurity.—

(3) The department, acting through the Florida Digital Service, is the lead entity responsible for establishing standards and processes for assessing state agency cybersecurity risks and determining appropriate security measures. Such standards and processes must be consistent with generally accepted technology best practices, including the National

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

583-02823-22 20221670c1

Institute for Standards and Technology Cybersecurity Framework, for cybersecurity. The department, acting through the Florida Digital Service, shall adopt rules that mitigate risks; safeguard state agency digital assets, data, information, and information technology resources to ensure availability, confidentiality, and integrity; and support a security governance framework. The department, acting through the Florida Digital Service, shall also:

(g) Annually provide cybersecurity training to all state agency technology professionals and employees with access to highly sensitive information which ~~that~~ develops, assesses, and documents competencies by role and skill level. The training may be provided in collaboration with the Cybercrime Office of the Department of Law Enforcement, a private sector entity, or an institution of the State University System.

(4) Each state agency head shall, at a minimum:

(i) Provide cybersecurity awareness training to all state agency employees within ~~in the first~~ 30 days after commencing employment, and annually thereafter, concerning cybersecurity risks and the responsibility of employees to comply with policies, standards, guidelines, and operating procedures adopted by the state agency to reduce those risks. The training may be provided in collaboration with the Cybercrime Office of the Department of Law Enforcement, a private sector entity, or an institution of the State University System.

Section 2. Section 282.3185, Florida Statutes, is created to read:

282.3185 Local government cybersecurity.—

(1) As used in this section, the term "local government"

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

means any county or municipality.

(2) The Florida Digital Service:

(a) Shall develop a basic cybersecurity practices training curriculum for local government employees. All local government employees with access to the local government's network must complete the basic cybersecurity training within 30 days after commencing employment and annually thereafter.

(b) Shall develop an advanced cybersecurity training curriculum for local governments which is consistent with the cybersecurity training required under s. 282.318(3)(g). All local government technology professionals and employees with access to highly sensitive information must complete the advanced cybersecurity training within 30 days after commencing employment and annually thereafter.

(c) May provide the cybersecurity training required by this subsection in collaboration with the Cybercrime Office of the Department of Law Enforcement, a private sector entity, or an institution of the State University System.

Section 3. The Legislature finds and declares that this act fulfills an important state interest.

Section 4. 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

2/28/22
Meeting Date

Appropriations
Committee

SB 1670
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:

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

2/28/22
Meeting Date

Appropriations
Committee

SB 1670
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jeff Scala

Phone (727) 637-4081

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Email jscala@fl-counties.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.

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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 Appropriations

BILL:	CS/CS/SB 1694
INTRODUCER:	Appropriations Committee; Military and Veterans Affairs, Space, and Domestic Security Committee; and Senator Hutson
SUBJECT:	Public Records and Public Meetings/Cybersecurity Incident or Ransomware Incident
DATE:	March 2, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Caldwell	MS	**Fav/CS**
2.	Hunter/Davis	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1694 adds language to section 282.3185, Florida Statutes, as created by CS/CS/SB 1670, to create a public records and meetings exemption for information relating to a cybersecurity incident or ransomware incident held by a political subdivision[1] or state agency to the extent that a disclosure of such information would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of physical or virtual data or information technology resources as defined in the exemption. It also provides a general public records exemption for coverage limits and deductible or self-insurance amounts of insurance or other risk mitigation coverages acquired for the protection of IT systems, operational technology systems, or data of an agency. The bill:

- Allows for information that has been made confidential and exempt under section 119.07(1), Florida Statutes, and Article I, section 24(a) of the State Constitution to be disclosed in limited circumstances by a political subdivision or state agency in the furtherance of its or the other agency's official or statutory duties or responsibilities;
- Requires that any portion of a meeting, as well as transcripts and recordings of said meeting, that includes the discussion of the referenced cybersecurity or ransomware incident information also be made exempt from sections 286.011 and 119.07(1), Florida Statutes, and Article I, section 24(a) of the State Constitution;

[1] "Political subdivision" means a separate agency or unit of local government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, city, commission, consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village. Section 11.45(1)(k), F.S.

- Prohibits any portion of an exempt public meeting from being off the record; and
- Requires any portion of an exempted public meeting to be recorded and transcribed.

The exemption provided under the bill shall stand repealed effective October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity that the public records exemption is necessary as disclosure of information relating to cybersecurity and ransomware incidents held by a political subdivision or the state could include information that could facilitate unauthorized access to, or modification, disclosure or destruction of information, information technology, or information resources. The bill includes a statement of public necessity for the closure of portions of public meetings where confidential and exempt information is disclosed making the meeting exempt from section 286.011, Florida Statutes.

The effective date of this act is the same date on which CS/CS/SB 1670 or similar legislation takes effect, if such legislation takes effect in the same legislative session or an extension thereof and becomes a law.

II. Present Situation:

Access to Public Records - Generally

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

[2] FLA. CONST. art. I, s. 24(a).
[3] *Id*.
[4] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022)
[5] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

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]
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]

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[6] 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).
[12] *See, e.g.*, s. 119.071, F.S.
[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).

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 that 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]

Current Cybersecurity Information Exemptions

Statutory exemptions for state agencies and utilities owned or operated by local governments related to information technology are contained in ss. 282.318(5) through (10) and 119.0713(5), F.S., respectively. The current statutory language does not directly address information related to cybersecurity incidents or ransomware incidents.

Portions of records held by a state agency[17] that contain network schematics, hardware and software configurations, or encryption, or that identify detection, investigation, or response practices for suspected or confirmed cybersecurity[18] incidents,[19] including suspected or confirmed breaches,[20] are confidential and exempt[21] from public record requirements if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

- Data[22] or information, whether physical or virtual; or

[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] "State agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission. The term includes the Department of Legal Affairs, The Department of Agriculture and Consumer Services, and the Department of Financial Services. The term does not include university boards of trustees or state universities. See s. 282.0041(33), F.S.
[18] "Cybersecurity" means the protection afforded to an automated information system in order to attain the applicable objectives of preserving the confidentiality, integrity, and availability of data, information, and information technology resources. See s. 282.0041(8), F.S.
[19] "Incident" means a violation or imminent threat of violation, whether such violation is accidental or deliberate, of information technology resources, security, policies, or practices. An imminent threat of violation refers to a situation in which the state agency has a factual basis for believing that a specific incident is about to occur. See s. 282.0041(19), F.S.
[20] "Breach" means unauthorized access of data in electronic form containing personal information. Good faith access of personal information by an employee or agent of the covered entity does not constitute a breach of security, provided that the information is not used for a purpose unrelated to the business or subject to further unauthorized use. See s. 282.0041(3), F.S.
[21] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att'y Gen. Fla. 04-09 (2004).
[22] "Data" means a subset of structured information in a format that allows such information to be electronically retrieved and transmitted. See s. 282.0041(9), F.S.

- Information technology (IT) resources,[23] which includes:
  - Information relating to the security of the agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or
  - Security information, whether physical or virtual, which relates to the agency's existing or proposed IT[24] systems.[25,26]

In addition, any portion of a public meeting that would reveal any of the above-described confidential and exempt records is exempt from public meeting requirements. Any portion of an exempt meeting must be recorded and transcribed. The recordings and transcripts are confidential and exempt from public record requirements unless a court of competent jurisdiction, following an in camera review, determines that the meeting was not restricted to the discussion of confidential and exempt data and information. If such a judicial determination occurs, only the portion of the recording or transcript that reveals nonexempt data may be disclosed.[27]

The confidential and exempt cybersecurity information must be available to the Auditor General, the Cybercrime Office within the Florida Department of Law Enforcement (FDLE), the Florida Digital Service (FLDS),[28] and for agencies under the jurisdiction of the Governor, the Chief Inspector General. In addition, the records may be made available to a local government, another state agency, or a federal agency for cybersecurity purposes or in the furtherance of the state agency's official duties.[29]

Information related to the security of a utility[30] owned or operated by a unit of local government[31] that is designed to protect the utility's networks, computers, programs, and data from attack, damage or unauthorized access, is exempt from public record requirements to the extent disclosure of such information would facilitate the alteration, disclosure, or destruction of data or IT resources.[32]

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[23] "Information technology resources" means data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance, and training. See s. 282.0041(22), F.S.

[24] "Information technology" means equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form. See s. 282.0041(20), F.S.

[25] Florida law provides a similar public record exemption for state university and Florida College System institutions. See s 1004.055, F.S.

[26] Section 282.318(5), F.S.

[27] Section 282.318(7), F.S. Florida law provides a similar public meeting exemption for state university and Florida College system institutions, see s. 1004.055, F.S.

[28] Florida Digital Service (FLDS) (formerly the Division of State Technology) is a subdivision of the Department of Management Services (DMS) and is charged with overseeing the state's information technology (IT) resources. Section 20.22(2)(b), F.S.

[29] Section 282.318(8), F.S.

[30] "Utility" means a person or entity that provides electricity, natural gas, telecommunications, water, chilled water, reuse water, or wastewater. Section 119.011(15), F.S.

[31] "Unit of local government" means a county, municipality, special district, local agency, authority, consolidated city - county government, or any other local governmental body or public body corporate or politic authorized or created by general or special law. Section 119.0713(2)(a), F.S.

[32] Section 119.0713 (5)(a)1., F.S.

In addition, information related to the security of existing or proposed IT systems or industrial control technology systems of a utility owned or operated by a unit of local government is exempt from public record requirements to the extent disclosure would facilitate unauthorized access to, and the alternation or destruction of, such IT systems in a manner that would adversely impact the safe and reliable operations of the IT systems and the utility.[33]

Current law also provides a public record exemption for certain cybersecurity information held by supervisor of elections that mirrors the public record exemption for state agencies, as described above.[34] The confidential and exempt information must be made available to the Auditor General and may be made available to another governmental entity for cybersecurity purposes or in the furtherance of the entity's official duties.[35]

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.[36] 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.[37] This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.[38]

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,"[39] or the "Sunshine Law,"[40] 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.[41] The board or commission must provide the public reasonable notice of such meetings.[42] 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.[43] Minutes of a public meeting must be promptly recorded and open to public inspection.[44] Failure to abide by open meetings requirements will invalidate any resolution, rule,

[33] Section 119.0713(5)(a)2., F.S.
[34] Section 98.015(13)(a), F.S.
[35] Section 98.015(13)(b), F.S.
[36] FLA. CONST. art. I, s. 24(b).
[37] *Id*.
[38] *Id.* 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."
[39] *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).
[40] *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).
[41] Section 286.011(1)-(2), F.S.
[42] *Id.*
[43] Section 286.011(6), F.S.
[44] Section 286.011(2), F.S.

or formal action adopted at a meeting.[45] A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.[46]

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.[47] 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.[48] A statutory exemption that does not meet these two criteria may be unconstitutional and may not be judicially saved.[49]

The Open Government Sunset Review Act (act) prescribes a legislative review process for newly created or substantially amended public records exemptions,[50] with specified exceptions.[51] It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[52] The act provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.[53]

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act[54] (act), prescribe a legislative review process for newly created or substantially amended[55] public records or open meetings exemptions, with specified exceptions.[56] 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.[57]

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[45] Section 286.011(1), F.S.
[46] Section 286.011(3), F.S.
[47] FLA. CONST. art. I, s. 24(c).
[48] *Id*.
[49] *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.
[50] Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).
[51] Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.
[52] Section 119.15(3), F.S.
[53] Section 119.15(6)(b), F.S.
[54] Section 119.15, F.S.
[55] 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.
[56] 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.
[57] Section 119.15(3), F.S.

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.[58] 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;[59]
- 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;[60] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[61]

The act also requires specified questions to be considered during the review process.[62] 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.[63] 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.[64]

III. Effect of Proposed Changes:

A public records and meeting exemption is added to s. 282.3185, F.S., as newly created in the linked substantive bill, CS/CS/SB1670, as subsection (3).

Public Records Exemption

The public records exemption under the bill makes confidential and exempt from public records inspection and copying those records held by a state agency or political subdivision relating to

[58] Section 119.15(6)(b), F.S.
[59] Section 119.15(6)(b)1., F.S.
[60] Section 119.15(6)(b)2., F.S.
[61] Section 119.15(6)(b)3., F.S.
[62] 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?

[63] *See generally* s. 119.15, F.S.
[64] Section 119.15(7), F.S.

cybersecurity or ransomware incidents to the extent that disclosure of such information would facilitate unauthorized access to the unauthorized modification, disclosure, or destruction of:

- Data or information, whether physical or virtual; or
- Information technology resources, including but not limited to:
  - Security of local government resources, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; and
  - Information relating to a local government's existing or proposed information technology systems.

Information that is made confidential and exempt may be disclosed by another a state agency or political subdivision or to another state agency or political subdivision in furtherance of its official duties and responsibilities.

Public Meetings Exemption

The bill also creates a meetings exemption establishing that any portion of a meeting that would reveal information that has been made confidential and exempt under this bill is exempt from s. 286.011, F.S. and s. 24(b), Art. I of the State Constitution. The bill prohibits any portion of an exempted meeting from being off the record and requires a recording and transcript of any closed meeting. The recording and the transcript are also confidential and exempt under s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution.

Review Date

The exemptions created under the bill are subject to the *Open Government Sunshine Review Act* and shall stand repealed as of October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

Statement of Important Public Necessity and Importance

The Legislature finds that this public records and meetings exemption serves an important public necessity as the information held by a political subdivision or a state agency related to cybersecurity or ransomware incidents, if released, could allow others to identify vulnerabilities in the computer network systems of state agencies and political subdivisions. Identification of these vulnerabilities could facilitate the unauthorized access, modification, disclosure, or destruction of data, information, or information technology in government network systems and could impair the administration of vital programs.

The Legislature also finds that the public meetings exemption in the bill is a public necessity and that any portion of a meeting in which confidential and exempt information is discussed should be exempt from s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution. The failure to close that portion of the meeting would defeat the underlying purpose of the exemption and could result in the release of highly sensitive information relating to cybersecurity incidents and ransomware incidents in state or political subdivision computer network systems.

The Legislature states the public records and meetings exemptions are of the utmost importance and are a public necessity.

The public records exemption shall take effect upon the same date as the effective date of CS/CS/SB 1670 or similar legislation, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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 and meetings requirements. This bill enacts new public records and meeting exemptions covering cybersecurity and ransomware incidents where information such as computer network systems, local government technology, data, and transcripts or recordings of any portions of meetings in which the covered subjects or data and its impact on state agencies and local governments is discussed.

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 statements of public necessity for the exemption by the Legislature, including a finding this exemption serves an important public necessity as information held by a political subdivision or a state agency as relating to cybersecurity or ransomware incidents, if released, could allow others to identify vulnerabilities in these computer network systems and facilitate further unauthorized breaches into the state's or political subdivision's data, information, information technology resources. Identification of additional vulnerabilities of political subdivisions and state agencies are identified specifically in CS/CS/SB 1670 should the data and resources from a cybersecurity or ransomware incident not be protected as are the potentially consequences should such information be publicly available.

The bill also provides a statement of public necessity for closed public meetings when confidential and exempt information relating to the cybersecurity and ransomware incidents are discussed. Any recordings and transcripts from these meetings in which exempt information is discussed is also made confidential and exempt. The meetings exemption is drawn to close only that portion of any meeting in which the confidential information is discussed and requires that closed meetings be transcribed and recorded.

The Legislature states that public records and meetings exemptions in the bill are of the utmost importance and are a public necessity.

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 proposed exemption is to protect data that may have been involved in data breaches, mitigate future data breaches that may involve the same entity, and ensure the security of the existing computer systems, computer network, or electronic devices. This bill draws a narrow exemption for specific types of data and information technology tools held by state agencies and local governments. Furthermore, the bill requires the transcription of any closed meeting as a record of events should there be any questions later and, for certain meetings, a recording is also required.

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:

If information is protected from public release, more individuals or entities that are the subject of cybersecurity attacks or ransomware incidents may come forward to law enforcement or state agencies for assistance.

C. Government Sector Impact:

The bill could have an insignificant negative fiscal impact on the state and local governments because staff responsible for complying with public record requests may require training related to creation of the public record exemption. In addition, state and local governments could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agencies.

Disclosure of cybersecurity and ransomware incidents can expose state agencies and political subdivisions to future attacks as such information and data can make these entities vulnerable helping to facilitate the unauthorized access to or modification of state

and local governmental entity computer networks and systems. Release of data and information can result in further data breaches as these vulnerabilities become public.

If information is protected from public release, more individuals or entities that are the subject of cybersecurity attacks or ransomware incidents may come forward to law enforcement or state agencies for assistance.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 282.3185 of the Florida Statutes, as created by CS/SB 1670.

IX. Additional Information:

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

CS/CS by Appropriations on February 28, 2022:
The committee substitute adds a general public record exemption in ch. 119, F.S., for information held by an agency before, on, or after July 1, 2022, regarding the coverage limits and deductible or self-insurance amounts of insurance or other risk mitigation.

CS by Military and Veterans Affairs, Space, and Domestic Security on February 8, 2022:
CS/SB 1694 narrows the public records and meetings exemption for information relating to a cybersecurity incident or ransomware incident held by a political subdivision or state agency to the extent that a disclosure of such information would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of physical or virtual data or information technology resources as defined in the exemption.

CS/SB 1694:

- Allows for information which has been made confidential and exempt under s. 119.07(1), F.S., and Art. I, of the State Constitution to be disclosed in limited circumstances by a political subdivision or state agency in the furtherance of it's or the other agency's official duties;
- Prohibits any portion of an exempt public meeting from being off the record;
- Requires any portion of an exempted public meeting to be recorded and transcribed;
- Maintains the repeal effective date of October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature;

- Provides a revised statement of public necessity that the public records exemption is necessary as disclosure of information relating to cybersecurity and ransomware incidents held by a political subdivision or the state could include information that could facilitate unauthorized access to, or modification, disclosure or destruction of information, information technology, or information resources;
- Includes a statement of public necessity relating to the closure of public meetings where any portion of a meeting in which this confidential and exempt information is discussed be made exempt from s. 286.011, F.S., including any recordings or transcripts; and
- Adds the linked substantive bill number, CS/SB 1670.

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	.	
03/02/2022	.	
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The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 119.0725, Florida Statutes, is created to read:

119.0725 Agency cybersecurity information; public records exemption; public meetings exemption.—

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

(a) "Breach" means unauthorized access of data in


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electronic form containing personal information. Good faith access of personal information by an employee or agent of an agency does not constitute a breach, provided that the information is not used for a purpose unrelated to the business or subject to further unauthorized use.

(b) "Critical infrastructure" means existing and proposed information technology and operational technology systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health, or public safety.

(c) "Cybersecurity" has the same meaning as in s. 282.0041.

(d) "Data" has the same meaning as in s. 282.0041.

(e) "Incident" means a violation or imminent threat of violation, whether such violation is accidental or deliberate, of information technology resources, security, policies, or practices. As used in this paragraph, the term "imminent threat of violation" means a situation in which the agency has a factual basis for believing that a specific incident is about to occur.

(f) "Information technology" has the same meaning as in s. 282.0041.

(g) "Operational technology" means the hardware and software that cause or detect a change through the direct monitoring or control of physical devices, systems, processes, or events.

(2) The following information held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Coverage limits and deductible or self-insurance


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amounts of insurance or other risk mitigation coverages acquired for the protection of information technology systems, operational technology systems, or data of an agency.

(b) Information relating to critical infrastructure.

(c) Network schematics, hardware and software configurations, or encryption information or information that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches, if the disclosure of such information would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, which include an agency's existing or proposed information technology systems.

(3) Any portion of a meeting that would reveal information made confidential and exempt under subsection (2) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. An exempt portion of a meeting may not be off the record and must be recorded and transcribed. The recording and transcript are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(4) The public records exemptions contained in this section apply to information held by an agency before, on, or after July 1, 2022.

(5)(a) Information made confidential and exempt pursuant to this section shall be made available to a law enforcement agency, the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Florida Digital Service within the Department of Management Services, and, for agencies


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under the jurisdiction of the Governor, the Chief Inspector General.

(b) Such confidential and exempt information may be disclosed by an agency in the furtherance of its official duties and responsibilities or to another agency or governmental entity in the furtherance of its statutory duties and responsibilities.

(6) Agencies may report information about cybersecurity incidents in the aggregate.

(7) 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. Subsection (13) of section 98.015, Florida Statutes, is amended to read:

98.015 Supervisor of elections; election, tenure of office, compensation, custody of registration-related documents, office hours, successor, seal; appointment of deputy supervisors; duties~~; public records exemption~~.—

~~(13)(a) Portions of records held by a supervisor of elections which contain network schematics, hardware and software configurations, or encryption, or which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:~~

~~1. Data or information, whether physical or virtual; or~~


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~~2. Information technology resources as defined in s. 119.011(9), which includes:~~

~~a. Information relating to the security of a supervisor of elections' technology, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or~~

~~b. Security information, whether physical or virtual, which relates to a supervisor of elections' existing or proposed information technology systems.~~

~~(b) The portions of records made confidential and exempt in paragraph (a) shall be available to the Auditor General and may be made available to another governmental entity for information technology security purposes or in the furtherance of the entity's official duties.~~

~~(c) The public record exemption in paragraph (a) applies to records held by a supervisor of elections before, on, or after the effective date of the exemption.~~

~~(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 3. Subsections (6) and (11) of section 282.318, Florida Statutes, are renumbered as subsections (5) and (10), respectively, and present subsections (5), (7), (8), (9), and (10) of that section are amended to read:

282.318 Cybersecurity.—

~~(5) Portions of records held by a state agency which contain network schematics, hardware and software configurations, or encryption, or which identify detection,~~


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~~investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:~~

~~(a) Data or information, whether physical or virtual; or~~

~~(b) Information technology resources, which includes:~~

~~1. Information relating to the security of the agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or~~

~~2. Security information, whether physical or virtual, which relates to the agency's existing or proposed information technology systems.~~

(6)~~(7)~~ Those portions of a public meeting as specified in s. 286.011 which would reveal records which are confidential and exempt under subsection (5) ~~or subsection (6)~~ are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. No exempt portion of an exempt meeting may be off the record. All exempt portions of such meeting shall be recorded and transcribed. Such recordings and transcripts are confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, after an in camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only that portion of the recording and transcript which reveals nonexempt data and


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information may be disclosed to a third party.

(7)~~(8)~~ The portions of records made confidential and exempt in subsections (5) and~~,~~ (6)~~, and (7)~~ shall be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Florida Digital Service within the department, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General. Such portions of records may be made available to a local government, another state agency, or a federal agency for cybersecurity purposes or in furtherance of the state agency's official duties.

(8)~~(9)~~ The exemptions contained in subsections (5) and~~,~~ (6)~~, and (7)~~ apply to records held by a state agency before, on, or after the effective date of this exemption.

(9)~~(10)~~ Subsections (5) and~~,~~ (6)~~, and (7)~~ are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4. (1) The Legislature finds that it is a public necessity that the following information held by an agency be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution:

(a) Coverage limits and deductible or self-insurance amounts of insurance or other risk mitigation coverages acquired for the protection of information technology systems, operational technology systems, or data of an agency.

(b) Information relating to critical infrastructure.

(c) Network schematics, hardware and software configurations, or encryption information or information that

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identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches, if the disclosure of such information would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, which include an agency's existing or proposed information technology systems.

Release of such information could place an agency at greater risk of breaches, cybersecurity incidents, and ransomware attacks. Such information could be used by criminals to identify any vulnerabilities that may exist in an agency's security system, thereby compromising the integrity of the agency's information technology, operational technology, and data. If information related to the coverage limits and deductible or self-insurance amounts of cybersecurity insurance were disclosed, it could give cybercriminals an understanding of the monetary sum an agency can afford or may be willing to pay as a result of a ransomware attack at the expense of the taxpayer. In addition, critical infrastructure information is a vital component of public safety and, if made publicly available, could aid in the planning of, training for, and execution of cyberattacks, thereby increasing the ability of persons to harm individuals in this state. The recent cybersecurity hacking and shutdown of the Colonial Pipeline by the criminal enterprise DarkSide in 2021 and the infiltration of the Bowman Avenue Dam in Rye Brook, New York, by Iranian hackers in 2013 provide evidence that such criminal capabilities exist. These events



also show the crippling effect that cyberattacks on critical infrastructure may have. Further, the release of network schematics, hardware and software configurations, or encryption information or information that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches, would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of data or information, whether physical or virtual, or information technology resources. Such information also includes proprietary information about the security of an agency's system. The disclosure of such information could compromise the integrity of an agency's data, information, or information technology resources, which would significantly impair the administration of vital governmental programs. Therefore, this information should be made confidential and exempt in order to protect the agency's data, information, and information technology resources.

(2) The Legislature also finds that it is a public necessity that any portion of a meeting that would reveal the confidential and exempt information be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution, and that any recordings and transcripts of the closed portion of a meeting be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The failure to close that portion of a meeting at which confidential and exempt information would be revealed, and prevent the disclosure of the recordings and transcripts of those portions of a meeting, would defeat the



purpose of the underlying public records exemption and could result in the release of highly sensitive information related to the cybersecurity of an agency system.

(3) For these reasons, the Legislature finds that these public records and public meetings exemptions are of the utmost importance and are a public necessity.

Section 5. This act shall take effect on the same date that SB 1670 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

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

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

A bill to be entitled

An act relating to public records and public meetings; creating s. 119.0725, F.S.; providing definitions; providing an exemption from public records requirements for certain cybersecurity insurance information, critical infrastructure information, and certain cybersecurity-related information held by an agency; providing an exemption from public meetings requirements for portions of a meeting that would reveal certain cybersecurity-related information held by an agency; requiring the recording and transcription of exempt portions of such meetings; providing an exemption from public records requirements for such recordings and transcripts;


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providing retroactive application; authorizing the disclosure of confidential and exempt information under certain circumstances; authorizing agencies to report certain cybersecurity information in the aggregate; providing for future legislative review and repeal of the exemptions; amending ss. 98.015 and 282.318, F.S.; conforming provisions to changes made by the act; providing a statement of public necessity; providing a contingent effective date.

By the Committee on Military and Veterans Affairs, Space, and Domestic Security; and Senator Hutson

583-02824-22 20221694c1

A bill to be entitled

An act relating to public records and public meetings; amending s. 282.3185, F.S.; providing an exemption from public records requirements for certain information related to a cybersecurity incident or ransomware incident held by a political subdivision or state agency; authorizing the disclosure of the confidential and exempt information under certain circumstances; providing an exemption from public meetings requirements for portions of a meeting that would reveal certain information related to a cybersecurity incident or ransomware incident held by a political subdivision or state agency; requiring the recording and transcribing of exempt portions of such meetings; providing an exemption from public records requirements for such recordings and transcripts; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (3) is added to section 282.3185, Florida Statutes, as created by SB 1670, 2022 Regular Session, to read:

282.3185 Local government cybersecurity.—

(3)(a) Information related to a cybersecurity incident or ransomware incident held by a political subdivision or state agency is confidential and exempt from s. 119.07(1) and s.

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

583-02824-22 20221694c1

24(a), Art. I of the State Constitution to the extent that disclosure of such information would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, including, but not limited to, the following:

a. Information relating to the security of the local government's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access.

b. Security information, whether physical or virtual, which relates to the local government's existing or proposed information technology systems.

(b) Information made confidential and exempt under paragraph (a) may be disclosed by a political subdivision or state agency:

1. In the furtherance of its official duties and responsibilities.

2. To another governmental entity in the furtherance of its statutory duties and responsibilities.

(c) Any portion of a meeting that would reveal information made confidential and exempt under paragraph (a) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. An exempt portion of a meeting may not be off the record and must be recorded and transcribed. The recording and transcript are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(d) This subsection is subject to the Open Government

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

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 related to a cybersecurity incident or ransomware incident held by a political subdivision or state agency be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution to the extent that disclosure of such information would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of data or information, whether physical or virtual, or information technology resources. Such information includes proprietary information about the security of a government system, and disclosure of that information could result in the identification of vulnerabilities and further breaches of the government system. In addition, the disclosure of such information could compromise the integrity of a government's data, information, or information technology resources, which would significantly impair the administration of vital programs. Therefore, this information should be made confidential and exempt in order to protect the government's data, information, and information technology resources. The Legislature also finds that it is a public necessity that any portion of a meeting in which the confidential and exempt information is discussed be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution, and that any recordings and transcripts of those portions of a meeting in which the confidential and exempt information is discussed be made confidential and exempt

from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The failure to close that portion of a meeting at which confidential and exempt information is discussed, and prevent the disclosure of the recordings and transcripts of those portions of a meeting, would defeat the purpose of the underlying public records exemption and could result in the release of highly sensitive information related to the cybersecurity of a government system. For these reasons, the Legislature finds that these public records and public meetings exemptions are of the utmost importance and are a public necessity.

Section 3. This act shall take effect on the same date that SB 1670 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

The Florida Senate

APPEARANCE RECORD

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

2/28/22
Meeting Date

Appropriations
Committee

SB 1694
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:

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

2/28/22
Meeting Date

Appropriations
Committee

SB 1694
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jeff Scala

Phone (727) 637-4081

Address 100 S Monroe
Street

Email jscala@fl-counties.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 Association 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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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 Appropriations

BILL:	CS/CS/SB 1710
INTRODUCER:	Appropriations Committee; Children, Families, and Elder Affairs Committee; and Senator Bradley and others
SUBJECT:	Guardianship
DATE:	February 25, 2022
REVISED:	2/28/22

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Fav/CS**
2.	Gerbrandt	Sadberry	AP	**Fav/1 Amendment**
3.			RC	

Please see Section IX. for Additional Information:

AMENDMENTS - Significant amendments were recommended

I. Summary:

CS/CS/SB 1710 requires the Florida Clerks of Court Operations Corporation (the CCOC) and clerks of court to establish a statewide database of guardianship information.

The bill:

- Requires the database to be interoperable with the data systems of each circuit court;
- Provides for the minimum database data points and requires the database to be searchable by certain data points;
- Requires the Office of Public and Professional Guardians (OPPG) to share professional guardian registration and data; and
- Requires the OPPG to publish professional guardian registration profiles on its website with certain minimum information requirements.

The bill is anticipated to have a significant negative fiscal impact on the CCOC and the clerks of court due to the cost of creating and maintaining the database and guardian registration profiles. Additionally, the bill has a significant negative fiscal impact on the DOEA related to the transmission of data to the CCOC and clerks of court, and from publishing professional guardian profiles on their website. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

II. Present Situation:

Guardianship

When an individual is unable to make legal decisions regarding his or her person or property, a guardian may be appointed to act on his or her behalf. A guardian is someone who is appointed by the court to act on behalf of a ward (an individual who has been adjudicated incapacitated) regarding his or her person or property or both.[1] Adjudicating a person totally incapacitated and in need of a guardian deprives a person of his or her civil and legal rights.[2] The Legislature has recognized that the least restrictive form of guardianship should be used to ensure the most appropriate level of care and the protection of that person's rights.[3]

The process to determine an individual's incapacity and the subsequent appointment of a guardian begins with a verified petition detailing the factual information supporting the reasons the petitioner believes the individual to be incapacitated, including the rights the alleged incapacitated person is incapable of exercising.[4] Once a person has been adjudicated incapacitated, termed a "ward", the court appoints a guardian and the letters of guardianship are issued.[5] The order appointing a guardian must be consistent with the ward's welfare and safety, must be the least restrictive appropriate alternative, and must reserve to the ward the right to make decisions in all matters commensurate with his or her ability to do so.[6]

Types of Guardians

Two Main Forms of Guardianship

There are two main forms of guardianship:
- Guardianship over the person; or
- Guardianship over the property, which may be limited or plenary.[7]

For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own affairs. If the adult is competent, this can be accomplished voluntarily.[8] However, when an individual's mental competence is in question, an involuntary guardianship may be established through the adjudication of incompetence which is determined by a court appointed examination committee.[9]

[1] Section 744.102(9), F.S.
[2] Section 744.1012(1), F.S.
[3] Section 744.1012(2), F.S
[4] Section 744.3201, F.S.
[5] *See* s. 744.345, F.S.
[6] Section 744.2005, F.S.
[7] *See generally*, s. 744.102(9), F.S. A plenary guardian exercises all delegable rights and powers of the ward after a court has determined that the ward lacks the capacity to perform all of the tasks necessary to care for his or her person or property.
[8] Section 744.341(1), F.S.
[9] *See generally*, s. 744.102(12), F.S.

Natural Guardians

Parents are considered natural guardians of their biological and adopted children, up until the time that their children cease to be minors, or unless the parents' parental rights have been terminated.[10]

Guardian Advocates

Guardian advocates are appointed by the court for persons with developmental disabilities.[11] A circuit court may appoint a guardian advocate, without an adjudication of incapacity, for a developmentally disabled individual if the person:

- Lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person, property, or estate; or
- Has voluntarily petitioned for the appointment of a guardian advocate.[12]

Voluntary Guardians

A court may appoint a voluntary guardian for a person who:

- Is incapable of the care, custody, and management of his or her estate by reason of age or physical infirmity; and
- Has voluntarily petitioned for the appointment.[13]

The petition must be accompanied by a certificate of a licensed physician specifying that he or she has examined the petitioner and that the petitioner is competent to understand the nature of the guardianship and his or her delegation of authority.[14] Notice of hearing on any petition for appointment and for authority to act must be given to the petitioner and to any person requested by the petitioner.[15] Such request may be made in the petition for appointment of guardian or in a subsequent written request for notice signed by the petitioner.[16]

Unless the voluntary guardianship is limited, a voluntary guardian appointed has the same duties and responsibilities as are provided by law for plenary guardians of the property.[17] A voluntary guardianship may be terminated by the ward by filing a notice with the court that the voluntary guardianship is terminated.[18]

Successor Guardians

A successor guardian must be appointed and duly qualified before a guardian can be relieved of their duties.[19] A successor guardian can only be appointed if a guardian dies, becomes

[10] Section 744.301(1), F.S.
[11] Section 744.102(11), F.S.
[12] Section 744.3085, F.S.
[13] Section 744.341(1), F.S.
[14] *Id*.
[15] *Id*.
[16] *Id*.
[17] Section 744.341(3), F.S.
[18] Section 744.341(5), F.S.
[19] Section 744.471, F.S.

incapacitated, or is removed. Successor guardians are governed by the laws concerning guardianships.[20]

Appointment of a Guardian

The following may be appointed guardian of a ward:

- Any resident of Florida who is 18 years of age or older and has full legal rights and capacity;
- A nonresident if he or she is related to the ward by blood, marriage, or adoption;
- A trust company, a state banking corporation, or state savings association, or a national banking association or federal savings and loan association, provided the entity is authorized and qualified to exercise fiduciary powers in Florida;
- A nonprofit corporation organized for religious or charitable purposes and existing under the laws of Florida;
- A judge who is related to the ward by blood, marriage, or adoption, or has a close relationship with the ward or the ward's family, if he or she serves without compensation;
- A provider of health care services to the ward, whether direct or indirect, when the court specifically finds that there is no conflict of interest with the ward's best interests; or
- A for-profit corporation that meets certain qualifications, including being wholly owned by the person who is the circuit's public guardian in the circuit where the corporate guardian is appointed.[21]

Guardians[22] who are not professional guardians are required to complete eight hours of instruction and training through a course approved by the chief judge of the circuit court and taught by a court-approved organization within four months after being appointed to a ward.[23] The instruction and training must cover:

- The legal duties and responsibilities of the guardian;
- The rights of the ward;
- The availability of local resources to aid the ward; and
- The preparation of habilitation plans and annual guardianship reports, including financial accounting for the ward's property.[24]

Examining Committees

Section 744.331, F.S., sets forth the procedures for determining whether a person is incapacitated. The notice of filing of a petition to determine incapacity and the petition for appointment of a guardian must be read to the alleged incapacitated person.[25] The alleged incapacitated person must be provided with an attorney, who cannot serve as the guardian or counsel for the guardian.[26] Within five days of filing a petition for determination of incapacity, the court must appoint an examining committee consisting of three members, which must include a psychiatrist or physician and two other persons, such as a psychologist, a nurse, social worker,

[20] *Id*.
[21] Section 744.309, F.S.
[22] Other than a parent who is the guardian of the property of a minor child.
[23] Section 744.3145, F.S.
[24] *Id*.
[25] Section 744.331(1), F.S.
[26] Section 744.331(2)(c), F.S.

gerontologist, or other qualified persons with sufficient knowledge, skill, experience, or training.[27]

Each committee member must examine the person and then issue a report evaluating the person's mental health, functional ability, and physical health.[28] The examining committee members must each submit their examining reports within 15 days after appointment.[29] Within three days after the report is filed and at least 10 days before the hearing, a copy of the committee member's report must be served on the petitioner and on the attorney for the alleged incapacitated person.[30] If the committee determines that the person is not incapacitated in any respect, the court must dismiss the petition.[31] However, if at least two of the three examining committee members conclude the person is incapacitated in some respect, the court proceeds to a hearing on the petition and makes a final determination based on the evidence presented by the parties.[32]

Emergency Temporary Guardianship

A court may appoint an emergency temporary guardian[33] for an allegedly incapacitated person upon a finding that there appears to be an imminent danger that:

- The physical or mental health or safety of the person will be seriously impaired; or
- The person's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken.[34]

Under those circumstances, a court may appoint an emergency temporary guardian after the filing of a petition for determination of incapacity and before the appointment of a guardian.[35] The court must appoint counsel to represent the alleged incapacitated person during the proceedings.[36] Further, the court may appoint an emergency temporary guardian on its own motion if no petition for appointment of guardian has been filed when the order determining incapacity is entered.[37]

Office of Public and Professional Guardians

In 1999, the Legislature created the "Public Guardianship Act" and established the Statewide Public Guardianship Office (SPGO) within the DOEA.[38] In 2016, the Legislature renamed the Statewide Public Guardianship Office within the DOEA as the Office of Public and Professional Guardians (OPPG), required OPPG to regulate professional guardians and investigate complaints, and added six full-time equivalent positions to the OPPG, including an attorney and

[27] Section 744.331(3)(a), F.S.
[28] Section 744.331(3)(e)-(f), F.S.
[29] Section 744.331(3)(e), F.S.
[30] Section 744.331(3)(h), F.S.
[31] Section 744.331(4), F.S.
[32] Section 744.331(5), F.S.
[33] Section 744.3031(1), F.S.
[34] *Id*.
[35] *Id*.
[36] *Id*.
[37] Section 744.3031(2), F.S.
[38] Chapter 99-277, L.O.F.

investigators.[39] The OPPG appoints local public guardian offices to provide guardianship services to people who have neither adequate income nor assets to afford a private guardian, nor any willing family or friend to serve.[40]

There are 17 public guardian offices that serve all 67 counties.[41] Since 2016, approximately 550 professional guardians have registered with the OPPG.[42]

Complaint Investigations

Any person may submit a complaint against a professional guardian to the OPPG. Once the OPPG receives a complaint, it is required to:

- Review and, if determined legally sufficient,[43] investigate complaints against professional guardians;
- Initiate an investigation no later than 10 business days after the OPPG receives a complaint;
- Complete and provide initial investigative findings and recommendations, if any, to the professional guardian and person filing the complaint within 60 days;
- Obtain supporting information, including interviewing the ward, family member, or interested party, or documentation to determine the legal sufficiency of a complaint;
- Dismiss any complaint that is not legally sufficient; and
- Coordinate with the clerks of court to avoid duplication of duties.

According to the DOEA, the annual numbers of complaints filed against a guardian or involving a guardianship since 2016 are as follows:

- 183 in 2016;
- 132 in 2017;
- 56 in 2018;
- 113 in 2019;
- 169 in 2020; and
- 89 in the first 6-months of 2021.[44]

The annual number of public records requests regarding OPPG complaints since 2017 are as follows:

- 17 in 2017;
- 11 in 2018;
- 63 in 2019;
- 31 in 2020; and

[39] Chapter 2016-40, L.O.F.
[40] The DOEA, *Office of Public and Professional Guardians*, available at https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/ (last visited January 22, 2022).
[41] The DOEA, *Office of Public and Professional Guardians (OPPG)*, available at https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/ (last visited January 23, 2022).
[42] *Id*.
[43] Section 744.2004(1), F.S., states that a complaint is legally sufficient if it contains ultimate facts that show a violation of a standard of practice by a professional guardian has occurred.
[44] Email from Derek Miller, Legislative Affairs Director, the DOEA, August 26, 2021 (on file with the Senate Children, Families, and Elder Affairs Committee).

- 48 in the first 8-months of 2021.[45]

Public and Professional Guardians

A professional guardian is a guardian who has at any time rendered services to three or more wards as their guardian; however, a person serving as a guardian for two or more relatives is not considered a professional guardian.[46] A public guardian is considered a professional guardian for purposes of regulation, education, and registration.[47]

Registration

A professional guardian must register with the OPPG annually.[48] As part of the registration, the professional guardian must:

- Provide sufficient information to identify the professional guardian;
- Complete a minimum of 40 hours of instruction and training through a course approved or offered by the OPPG;[49]
- Successfully pass an examination approved by the DOEA to demonstrate competency to act as a professional guardian;
- Undergo a criminal background check by the Federal Bureau of Investigation and the Florida Department of Law Enforcement;
- Submit to a credit history check; and
- Maintain a current blanket bond.[50, 51]

Guardians registered with the OPPG must complete a minimum of 16 hours of continuing education every two calendar years after the year in which the initial 40-hour educational requirement is met. The ward's assets may not be used to pay for such education.[52]

Guardians seeking appointment by the court and all employees of a professional guardian who have a fiduciary responsibility to the ward must submit to a credit history check and undergo a level 2 background screening.[53] The DOEA must ensure the clerks of the court and the chief judge of each judicial circuit receive information about each registered professional guardian.[54]

The executive director of the OPPG may deny registration to a professional guardian if the executive director determines that the guardian's proposed registration, including the guardian's credit or criminal investigations, indicates that registering the professional guardian would

[45] *Id*.
[46] Section 744.102(17), F.S
[47] *Id*.
[48] Section 744.2002, F.S.
[49] This training may not be paid with the assets of the ward.
[50] Section 744.2003(2), F.S., further requires the bond to be maintained by the guardian in an amount not less than $50,000 and must cover all wards for whom the guardian has been appointed at any given time. The liability of the provider of the bond is limited to the face amount of the bond, regardless of the number of wards for whom the professional guardian has been appointed.
[51] Sections 744.2002(3) and 744.3135, F.S.
[52] Section 744.2003(3), F.S.
[53] Section 744.3135(1), F.S.
[54] Section 744.2002(9), F.S.

violate any provision of ch. 744, F.S.[55] The OPPG is required to report any suspension or revocation of a professional guardian's registration to the court of competent jurisdiction for any guardianship case to which the professional guardian is currently appointed.[56]

Responsibilities of the Clerk of the Circuit Court

In addition to the duty to serve as the custodian of the guardianship files, the clerk must review each initial and annual guardianship report to ensure that it contains required information about the ward.[57] Guardians are required to file initial reports and annual reports consisting of accounting or guardianship plans after they are appointed to a ward.[58] The initial guardianship report, for a guardian of a ward's property, must consist of a verified inventory of such property.[59] For a guardian of a person, the initial guardianship report must consist of an initial guardianship plan, including details such as where the ward will live and any medical or social services the ward may need.[60] Annual plans must consist of an annual accounting of the ward's property and the process by which the ward is being served by the guardian.[61]

The clerk is required to complete his or her review of the initial or annual report within 30 days after the filing of such reports.[62] The clerk is also required to audit the verified inventory and accountings report within 90 days of its filing, and report his or her findings to the court.[63] The clerk must notify the court when a required report is not timely filed by a guardian.[64]

If the clerk has reason to believe further review is appropriate, the clerk may request and review records and documents that reasonably impact guardianship assets, including, but not limited to, the beginning inventory balance and any fees charged to the guardianship.[65]

If a guardian fails to produce records and documents to the clerk upon request, the clerk may request the court to enter an order requiring a guardian to file the report.[66] The judge may also impose sanctions on the guardian, which may include contempt, removal of the guardian, and fines.[67]

Florida Clerks of Court Operations Corporation

The Legislature created the CCOC in 2003.[68] It is a public corporation organized to perform the specific functions assigned in ss. 28.35, 28.36, and 28.37, F.S., which outline the CCOC's duties,

[55] Section 744.2002, F.S.
[56] Section 744.2004(4), F.S.
[57] Section 744.368, F.S.
[58] Section 744.361, F.S.
[59] Section 744.362, F.S.,
[60] Sections 744.362–744.363, F.S.
[61] Section 744.367, F.S.
[62] Section 744.368(2), F.S.
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] Sections 744.368–744.3685, F.S.
[67] Sections 744.3685(3) and 744.367(5), F.S.
[68] Chapter 2003-402, L.O.F.

the clerks' budget procedure for court-related functions, and how fines, fees, service charges, and costs are to be remitted to the state.[69] All clerks of the circuit court are members and hold their position and authority as ex officio members.[70] The responsibilities assigned to the CCOC are performed by an executive council composed of eight clerks from various size populations and three ex officio members designated by the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court.[71]

In general terms, the CCOC was created to provide professional budget support to the 67 clerks of court and ensure that resources are fairly and equitably distributed for the operation of the courts.[72] The CCOC's duties include, but are not limited to:

- Recommending to the Legislature changes in the amounts of various court-related fines, fees, service charges, and costs that are established in law to ensure that the clerks have reasonable and adequate funding to perform their court-related functions.
- Developing and certifying a uniform system of workload measures and workload standards for court-related functions.
- Entering into a contract with the Department of Financial Services to audit the court-related expenditures of individual clerks.
- Approving the proposed budgets submitted by clerks.[73]

When approving the clerks' proposed budgets, the CCOC must ensure that the total combined budgets of the clerks do not exceed:

- The total estimated revenues from fees, service charges, costs, and fines for court-related functions that are available for court-related expenditures (as determined by the most recent Revenue Estimating Conference);
- The total of unspent budgeted funds for court-related functions carried forward by the clerks from the previous county fiscal year; and
- The balance of funds remaining in the Clerks of Court Trust Fund after funds are transferred to General Revenue as required by law.[74]

Guardianship Improvement Task Force

In the summer of 2021, the Florida Court Clerks and Comptrollers organized the Guardianship Improvement Task Force (Task Force), which examined numerous aspects of Florida's guardianship system and laws.[75] The Task Force was formed with the goal of studying the current status of guardianships in Florida and making recommendations to improve the safety of

[69] Sections 28.35-28.37, F.S.
[70] Section 28.35(1)(a), F.S.
[71] Section 28.35(1)(b)1., F.S.
[72] The CCOC, *About the CCOC,* available at https://flccoc.org/about-us/ (last visited January 25, 2022).
[73] Section 28.35(2)(c), (d), (e), and (f), F.S.
[74] Section 28.35(2)(f), F.S.
[75] The Florida Bar, Florida Bar News, *Guardianship Improvement Task Force Inks Its Final Report*, November 16, 2021, available at https://www.floridabar.org/the-florida-bar-news/guardianship-improvement-task-force-inks-its-final-report/ (last visited January 23, 2022).

wards across Florida.[76] The Task Force was comprised of 22 members, including judges, clerks of court, members of the Legislature, attorneys, state agencies, and numerous others.[77]

Task Force Report

On November 15, 2021, the Task Force finalized a report summarizing their work and containing numerous legislative recommendations.[78] Recommendations encompassed the following nine focus areas:

- Statewide Guardianship Data Transparency;
- Statewide Uniformity in Forms, Processes, and Practices;
- Increased Oversight, Safeguards, and Court Monitoring Practices Across the State;
- Preserving the Rights, Dignity, and Autonomy of Alleged and Adjudged Incapacitated Persons;
- Ensuring the Use of Least Restrictive Alternatives (including Advance Directives and Supported Decision-Making);
- Health and Residential Care "Pipeline to Guardianship";
- Enhanced Education and Qualification Requirements of Professionals and Parties in Guardianship;
- Increased Accessibility and Transparency of Professional Guardians and the Guardianship Process; and
- Need for Additional Workgroup(s) Responsible for Assessing Florida's Guardianship System.[79]

The report concluded that the most significant issue addressed by the Task Force was the need for a method to improve the availability of data in order to document problems within Florida's guardianship system.[80] The report further stated that a great deal of basic information related to guardianship cases is not readily available, including but not limited to:

- The number of people under guardianship;
- The number of guardians across the state;
- How many cases each guardian has under their purview;
- How much money and property are under the control of guardians across the state; and
- Information related to wards.[81]

According to the report, one topic of concern identified was the potential failure by the courts, clerks of court, and/or court monitors to report situations of abuse, neglect, or exploitation to Florida's Central Abuse Hotline.[82] Without any formalized method for data collection by the courts in each guardianship case, the Task Force concluded that there is no way to determine

[76] Florida Court Clerks and Comptrollers, Guardianship Improvement Task Force, *About the Task Force*, available at https://www.guardianshipimprovementtaskforce.com/ (last visited January 23, 2022).
[77] *Id*.
[78] Florida Court Clerks and Comptrollers, Guardianship Improvement Task Force, *Final Report*, January 2022, available at https://guardianshiptf.wpengine.com/wp-content/uploads/2022/01/GITFReport-Jan2022.pdf (last visited January 23, 2022) (hereinafter, "The Final Report").
[79] *Id.* at pp. 19-23.
[80] *Id*. at p. 29.
[81] *Id*.
[82] *Id*. at p. 30.

whether the courts, clerks, and court monitors are complying with their mandatory reporting obligations provided under s. 415.1034, F.S.[83]

Ultimately, the Task Force made the following four recommendations in the area of data transparency:

- Create a statewide data collection system for all guardianship cases;
- Require that every judicial circuit collect and report information in all guardianship cases regarding the existence of advance directives, powers of attorney, health care surrogate designations, and other similar legal documents, whether the document was honored (in part or total), and any reason given by the court for not honoring the document;
- Require that every judicial circuit collect and report guardianship case information and changes to the Office of Public and Professional Guardians (OPPG); and
- Require that OPPG promptly notify the chief judge in any judicial circuit in which a professional guardian is currently serving and/or has previously served as a guardian in a case of any verified findings of misconduct, disciplinary records, or removal of the guardian for cause by any other court.[84]

The report also noted that exactly how widespread and extensive such abuses by guardians may be remains is unknown, due in part to a lack of available data.[85] Relevant questions regarding the demographics of Florida's professional guardians include:

- How many professional guardians in Florida are also public guardians?
- How many professional guardians in Florida maintain dual (state or federal) licenses, such as attorneys barred to practice in Florida?
- How many professional guardians also serve as representative payees in non-guardianship cases?
- How many professional guardians in Florida take on pro bono cases?
- How many professional guardians are compensated by hospitals, assisted living facilities, or other health or residential care providers to serve as a guardian in specific cases?

To address these issues, the Task Force recommended the creation of a publicly accessible, online database regarding the registration, qualifications, and disciplinary/removal history for all professional guardians.[86]

III. Effect of Proposed Changes:

- The bill creates s. 744.2112, F.S., requiring the CCOC and clerks of court to establish a statewide database of guardianship information to facilitate improved court oversight of guardianships. The database must be interoperable with existing data systems of each circuit court, and must include, at a minimum:
- Professional guardian registration and disciplinary data;

[83] Section 415.1034, F.S., provides that any person who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited must immediately report such knowledge or suspicion to the central abuse hotline.
[84] The Final Report at p. 29-38.
[85] *Id*. at p. 85.
[86] *Id*. at p. 84.

- Information related to the status of guardian compliance; and
- Information related to the status of statutorily required reports and submissions.

The database must be searchable by, at a minimum:
- Petitioner;
- Ward and ward demographic information;
- Guardian and guardian location;
- Counsel;
- Other parties to each case;
- Judge; and
- Circuit.

The CCOC and clerks of court will need to identify specific data points to include within the database beyond those listed above.

The bill also requires the OPPG to share registration and disciplinary data with the CCOC and clerks of court. The bill also requires the OPPG to publish public professional guardian registration profiles on its website. The profiles must be accessible and searchable by the public and include, at a minimum:
- Information that identifies the guardian;
- Documentation proving bonding and educational requirements have been met;
- Sufficient information to distinguish a guardian providing guardianship services as a public guardian, individually, through a:
  - Partnership;
  - Corporation; or
  - Any other business organization;
- Substantiated complaints against the guardian, if any; and
- Disciplinary actions taken by the DOEA against the guardian, if any.

The bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill requires clerks of court to gather and compile data, which will likely result in an unknown cost to counties throughout the state as a result of increased workload. Further, the bill requires the CCOC to establish a database. To the extent that the bill results in increased workload, it may conflict with the provisions of Article VII, Section 18 of the Florida Constitution by requiring counties to expend funds.

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:

House Bill 1349, the substantially similar companion bill to CS/CS/SB 1710 provides the Florida Clerk of Courts Operations Corporation (CCOC) with $2.4 million in nonrecurring general revenue funds to establish the database. The HB also provides $340,000 ($40,000 recurring and $300,000 nonrecurring) general revenue funds to the Florida Department of Elderly Affairs to implement the bill.

The CCOC may have recurring costs associated with maintenance of the database and the clerk of courts may have recurring costs associated with an increase in workload related to compiling data, yet those costs are currently indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates section 744.2112 of the Florida Statutes.

IX. Additional Information:

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

CS by Children, Families, and Elder Affairs on January 25, 2022:
The CS:

- Requires the CCOC and clerks of court to create and maintain a guardianship database, rather than the DOEA as under the original bill;
- Requires the database to have the ability to generate statewide and circuit-level statistical data of assistance to the courts and the DOEA;
- Requires the database to be interoperable with existing data systems in each circuit court;
- Requires the database to include and be searchable by minimum data points;
- Requires the OPPG to share registration and disciplinary data with the CCOC and clerks of court;
- Requires the OPPG to publish public professional guardian registration profiles on its website;
- Requires the profiles to be accessible and searchable by the public and to include certain minimum information;
- Removes conforming provisions made in ss. 744.2001, 744.362, 744.363, 744.365, and 744.367, F.S.;
- Removes legislative findings and intent;
- Removes dates specifying when data must be submitted to the DOEA and published; and
- Removes language specifying that any information which, pursuant to s. 119.071, F.S., is exempt from public records disclosure requirements when held by a reporting agency retains that exempt status after being submitted to the DOEA.

B. Amendments:

Barcode 208562 by Appropriations on February 28, 2022:
The amendment:

- Requires the Florida Clerks of Court Operation Corporation (CCOC), on or after July 1, 2023, to create a limited access statewide database for the judiciary to increase judicial oversight and a publicly searchable website and database to increase transparency with the public.
- Requires the judicial oversight database to be accessible only by the judiciary and their direct staff to perform court personnel's duties.
- Provides an enumerated list of data elements that must, at a minimum, be included and list of searchable elements that must, at a minimum, be included in the judicial oversight database.
- Requires the COCC, on or after July 1, 2023, to also create a publicly accessible and searchable webpage that contains specified guardian information.
- Requires the CCOC to generate and publish monthly reports of statistical data and generate other reports upon request by certain entities.

- Requires the CCOC to work with stakeholders to develop proposed lists of data elements for inclusion in the judicial oversight and publicly searchable databases and provide the lists to the Governor and Legislature by January 1, 2023.
- Requires the OPPAGA to conduct a comparative analysis and to study trends in the use of Florida's guardianship system and provide an annual report to the Governor and the Legislature beginning in 2024 through 2027.
- Provides rule making authority the Department of Elderly Affairs (DOEA) to implement the bill.
- Provides a $2.4 million nonrecurring general revenue appropriation to the CCOC to develop the databases. Provides $340,000, of which $300,000 is nonrecurring, to the DOEA to implement the provisions of the bill.

(WITH TITLE AMENDMENT)

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: RS	.	
02/28/2022	.	
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The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 744.2112, Florida Statutes, is created to read:

744.2112 Guardianship Data Collection and transparency.—

(1)(a) On or after July 1, 2023, the Florida Clerks of Court Operations Corporation and the clerks of court shall establish a statewide database of guardianship information that



shall be accessible to and searchable by the courts to facilitate improving court oversight of guardianship cases. The database must meet interoperability standards defined by the Florida Courts Technology Commission such that each circuit court can easily access the data for regular use in judicial proceedings. The database must include, at a minimum, all of the following:

1. The status of each professional guardian's bond, registration data, substantiated disciplinary history provided by the Office of Public and Professional Guardians, and the grounds that constitute the misconduct leading to the discipline.

2. Information regarding the status of each guardian's compliance with the statutory qualifications for guardianship.

3. The status of statutorily required annual registrations for the professional guardian as required by section 744.2002(2), and the status of reports and submissions statutorily required under chapter 744.

(b) The database must be searchable by, at a minimum, the name of the petitioner, ward, guardian, guardian advocate, legal counsel for all parties, and other parties to a case; the demographic information of the ward; the guardian's location; and the name of the judge and circuit in which the case is brought. The database must have the ability to generate statewide and circuit-level statistical data to provide assistance to the courts. The Office of Public and Professional Guardians is directed to share professional guardian registration and substantiated disciplinary data with the Florida Clerks of Court Operations Corporation for the purposes



of inclusion in the database pursuant to this subsection.

(2) On or after July 1, 2023, the Office of Public and Professional Guardians shall publish a profile of each registered professional guardian on its website. The profiles must be accessible to and searchable by the public and must include, at a minimum, the information submitted to the Office of Public and Professional Guardians under section 744.2002, whether any complaints against the professional guardian have been substantiated, and any disciplinary actions taken by the Department of Elderly Affairs. The department may adopt rules to implement the provisions of this subsection.

(3)(a) Beginning July 1, 2024, and annually thereafter through July 1, 2027, the Florida Clerks of Court Operation Corporation shall compile and report data maintained in the database that has been collected from the clerks of court and the department and submit such data to the Office of Program Policy Analysis and Governmental Accountability (OPPAGA).

(b) The OPPAGA must analyze the consolidated data compiled in accordance with paragraph (a) to evaluate trends in the use and effectiveness of guardianships in this state and conduct a comparative analysis of guardianship laws in other states. In conducting the report, the OPPAGA shall consult with the Office of State Courts Administration, the Florida Clerks of Court Operation Corporation, the clerks of the court, and the department. The OPPAGA shall submit a report containing findings and recommendations to the Governor, the President of the Senate, the Speaker of the House of Representatives by October 15, 2024, and annually thereafter through October 15, 2027.

(c) The reports provided under paragraphs (a) and (b) must


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not contain personal identifying information of wards.

Section 2. For the 2022-2023 fiscal year, the sum of $2,400,000 in nonrecurring funds is appropriated from the General Revenue Fund to the Justice Administrative Commission for distribution to the Florida Clerks of Court Operations Corporation for the purpose of implementing this act.

Section 3. For the 2022-2023 fiscal year, the sums of $40,000 in recurring funds and $300,000 in nonrecurring funds are appropriated from the General Revenue Fund to the Department of Elderly Affairs for the purpose of implementing this act.

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to guardianship data transparency; creating s. 744.2112, F.S.; requiring the Florida Clerks of Court Operations Corporation and the clerks of court to establish a statewide database of guardianship data on or after a certain date; requiring the database to meet certain interoperability standards; requiring the database to contain certain information; limiting access to the database to certain persons; requiring the Office of Public and Professional Guardians to provide certain data for use in the database; requiring the database to be searchable in specified ways; requiring the database to be able to generate certain statistical



data; requiring the Office of Public and Professional Guardians to publish online profiles of registered professional guardians on or after a certain date; requiring the online profiles to contain certain information; requiring the profiles to be accessible to and searchable by the public; requiring the profiles to include certain information; providing rulemaking authority; requiring the Florida Clerks of Court Operations Corporation and clerks of court to analyze and compile data by a certain date; requiring the Office of Program Policy Analysis and Governmental Accountability to analyze data and prepare reports containing certain information; requiring the reports be provided annually to the Governor, the President of the Senate, and the Speaker of the House of Representatives by a certain date; prohibiting the reports from containing certain information; providing appropriations; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Appropriations (Bradley) recommended the following:

Senate Substitute for Amendment (483144) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 744.2112, Florida Statutes, is created to read:

744.2112 Guardianship data collection and transparency.—

(1)(a) On or after July 1, 2023, the Florida Clerks of Court Operations Corporation and the clerks of court shall

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establish a statewide database of guardianship information to facilitate improving court oversight of guardianship cases. The database must meet interoperability standards defined by the Florida Courts Technology Commission, such that each circuit court can easily access the data for regular use in judicial proceedings under this chapter. The database must include, at a minimum, all of the following:

1. The status of each professional guardian's bond and registration data.

2. Substantiated disciplinary data of each professional guardian provided by the Office of Public and Professional Guardians and the grounds for such discipline.

3. Information regarding the status of each guardian's compliance with the statutory qualifications for guardianship.

4. The status of statutorily required annual registrations for the professional guardian as required by s. 744.2002(2) and the status of reports and submissions statutorily required under chapter 744.

5. The number of wards served by each guardian, by ward county of residence.

(b) The database must be searchable by, at a minimum, the name of the petitioner, ward, guardian, guardian advocate, and legal counsel for all parties; the demographic information of the ward; the guardian's location; the name of the judge and circuit in which the case is brought; and the number of wards served by each guardian, by ward county of residence. The database must have the ability to generate statewide and circuit-level statistical data to provide assistance to the courts.

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(c) The database established under this subsection must be accessible only by members of the judiciary and their direct staff. The database must restrict access to that information needed to perform an individual court personnel's duties, but in no way restrict access by judges and magistrates.

(2) On or after July 1, 2023, the Florida Clerks of Court Operations Corporation shall also establish a publicly accessible webpage to facilitate improving transparency of guardianship cases to the public.

(a) The Florida Clerks of Court Operations Corporation must generate monthly reports of statewide, circuit-level, and county-level statistical data to provide assistance to the courts and the Department of Elderly Affairs, and transparency to the public and policymakers, regarding the state's guardianship system. Such data reports must include only aggregated and deidentified data and must be published on the webpage established under this subsection.

(b) The webpage established under this subsection must include a database that is accessible to and searchable by the public. The database must be searchable by the name of a professional guardian to view current data regarding the number of wards served by that guardian, the counties of residence of such wards, and whether the wards are under limited or plenary guardianships. Such search may not allow access to personal identifying information of wards.

(3) The Office of Public and Professional Guardians is directed to share professional guardian registration and disciplinary action data for the purposes of this section.

(4) In addition to the reports required under paragraph

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(2)(a), the Florida Clerks of Court Operations Corporation must also generate reports using information in the databases established under subsection (1) or subsection (2) at the request of the Legislature, the judiciary, or the Department of Elderly Affairs.

(5)(a) By January 1, 2023, the Florida Clerks of Court Operations Corporation must provide the President of the Senate and the Speaker of the House of Representatives with a proposed list of specific data elements for inclusion in a database established pursuant to subsection (1) for regular judicial use. Additionally, the Florida Clerks of Court Operations Corporation must provide a proposed list of relevant data elements that may be considered for inclusion, in addition to those enumerated in paragraph (2)(b), in a publicly accessible and searchable database to be used for providing enhanced transparency of the state's guardianship cases to the public. Any data elements recommended for inclusion in the publicly searchable database must be established in a manner that ensures confidentiality of ward information.

(b) To develop the proposed lists of data points, the Florida Clerks of Court Operations Corporation shall engage with stakeholders, including, but not limited to, judicial officers and magistrates who handle guardianship and probate matters; the Florida State Guardianship Association; the Elder Law Section of The Florida Bar; the Real Property, Probate, and Trust Law Section of The Florida Bar; and the Department of Elderly Affairs, to obtain feedback for use in the development of specific data elements for any databases established in accordance with this section. The Florida Clerks of Court


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Operations Corporation must collaborate with the Office of the State Courts Administrator and the clerks of the court through the Florida Courts Technology Commission to implement the data elements and databases to achieve interoperability.

(6)(a) Beginning July 1, 2024, and annually thereafter through July 1, 2027, the Florida Clerks of Court Operations Corporation shall compile data maintained in the database that has been collected from the clerks of court and the Department of Elderly Affairs and submit such data to the Office of Program Policy Analysis and Government Accountability (OPPAGA).

(b) OPPAGA shall analyze the consolidated data compiled in accordance with paragraph (a) to evaluate trends in the use of guardianships in this state and conduct a comparative analysis of guardianship laws in other states. In conducting the analysis, OPPAGA shall consult with the Office of State Courts Administrator, the Clerks of Court Operations Corporation, the clerks of the court, and the Department of Elderly Affairs. OPPAGA shall submit a report containing findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 15, 2024, and annually thereafter through October 15, 2027.

(c) The data compiled and reported under paragraphs (a) and (b) must be produced in a statewide, circuit-level, and county-level statistical format. Such reports must include only aggregated and deidentified data. Further, the reports provided under paragraphs (a) and (b) may not contain personal identifying information of wards.

Section 2. Subsection (7) is added to section 744.2001, Florida Statutes, to read:

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744.2001 Office of Public and Professional Guardians.—There is created the Office of Public and Professional Guardians within the Department of Elderly Affairs.

(7) The Office of Public and Professional Guardians shall publish on its website a profile of each registered professional guardian. The profiles must be accessible and searchable by the public and must include, at a minimum, the guardian's name and business address, whether the guardian meets the education and bonding requirements under s. 744.2003, the number and type of substantiated complaints against the professional guardian, and any disciplinary actions taken by the Department of Elderly Affairs against the guardian. The Department of Elderly Affairs may adopt rules necessary to implement this subsection.

Section 3. For the 2022-2023 fiscal year, the sum of $2,400,000 in nonrecurring funds is appropriated from the General Revenue Fund to the Justice Administrative Commission for distribution to the Florida Clerks of Court Operations Corporation for the purpose of implementing this act.

Section 4. For the 2022-2023 fiscal year, the sums of $40,000 in recurring funds and $300,000 in nonrecurring funds are appropriated from the General Revenue Fund to the Department of Elderly Affairs for the purpose of implementing this act.

Section 5. 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 guardianship data transparency;

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creating s. 744.2112, F.S.; requiring the Florida Clerks of Court Operations Corporation and the clerks of court to establish a statewide database of guardianship data on or after a certain date; specifying requirements for the database; specifying database access restrictions; requiring the corporation and clerks of court to establish a webpage for certain purposes on or after a specified date; requiring the corporation to generate certain monthly reports; requiring that the webpage include a database meeting certain requirements; requiring the Office of Public and Professional Guardians to share certain data; requiring the corporation to generate certain reports at the request of certain entities; requiring the corporation to provide the Legislature with certain lists by a specified date; providing requirements for the corporation in developing such lists and in implementing data elements and databases; requiring the corporation to annually compile and submit certain data to the Office of Program Policy Analysis and Government Accountability (OPPAGA); requiring OPPAGA to conduct a certain analysis and submit annual reports to the Governor and the Legislature; specifying requirements for certain data and reports; amending s. 744.2001, F.S.; requiring the Office of Public and Professional Guardians to publish profiles of registered professional guardians on its website; specifying requirements for the profiles; authorizing the Department of Elderly Affairs to adopt

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rules; providing appropriations; providing an effective date.

By the Committee on Children, Families, and Elder Affairs; and Senators Bradley, Brandes, and Brodeur

586-02286-22 20221710c1

A bill to be entitled

An act relating to guardianship; creating s. 744.2112, F.S.; requiring the Florida Clerks of Court Operations Corporation and clerks of court to establish a statewide database of guardianship information for certain purposes; requiring the database to be interoperable with certain data systems; requiring the database to include certain information; requiring the database to be searchable by certain data points; requiring the database to have the ability to generate certain information; requiring the Office of Public and Professional Guardians to share certain information; requiring the Office of Public and Professional Guardians to publish professional guardian registration profiles on its website; requiring the profiles to be accessible and searchable by the public; requiring the profiles to include certain information; providing an effective date.

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

Section 1. Section 744.2112, Florida Statutes, is created to read:

744.2112 Statewide database of guardianship information; publication of professional guardian registration profiles.—

(1) The Florida Clerks of Court Operations Corporation and clerks of court shall establish a statewide database of guardianship information to facilitate improved court oversight of such guardianships. The database must be interoperable with

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

586-02286-22 20221710c1

the data systems of each circuit court, such that each circuit court may easily access the data for regular use in judicial proceedings. The database must include, at a minimum, professional guardian registration and disciplinary data provided by the Office of Public and Professional Guardians, information on the status of guardian compliance with the statutory qualifications for guardianship, and the status of statutorily required reports and submissions. The database must be searchable by, at a minimum, petitioner, ward, ward demographic information, guardian and guardian location, counsel, other parties to each case, judge, and circuit. The database must have the ability to generate statewide and circuit-level statistical data of assistance to the courts and the Department of Elderly Affairs. The Office of Public and Professional Guardians shall share professional guardian registration and disciplinary data for the purposes of this subsection.

(2) The Office of Public and Professional Guardians shall publish professional guardian registration profiles on its Internet website. The profiles must be accessible and searchable by the public, and shall include, at a minimum, information submitted under s. 744.2002, whether any complaints against the professional guardian have been substantiated, and any disciplinary actions taken by the department.

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

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/28/2022	.	
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The Committee on Appropriations (Bradley) recommended the following:

Senate Substitute for Amendment (483144) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 744.2112, Florida Statutes, is created to read:

744.2112 Guardianship data collection and transparency.—

(1)(a) On or after July 1, 2023, the Florida Clerks of Court Operations Corporation and the clerks of court shall

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establish a statewide database of guardianship information to facilitate improving court oversight of guardianship cases. The database must meet interoperability standards defined by the Florida Courts Technology Commission, such that each circuit court can easily access the data for regular use in judicial proceedings under this chapter. The database must include, at a minimum, all of the following:

1. The status of each professional guardian's bond and registration data.

2. Substantiated disciplinary data of each professional guardian provided by the Office of Public and Professional Guardians and the grounds for such discipline.

3. Information regarding the status of each guardian's compliance with the statutory qualifications for guardianship.

4. The status of statutorily required annual registrations for the professional guardian as required by s. 744.2002(2) and the status of reports and submissions statutorily required under chapter 744.

5. The number of wards served by each guardian, by ward county of residence.

(b) The database must be searchable by, at a minimum, the name of the petitioner, ward, guardian, guardian advocate, and legal counsel for all parties; the demographic information of the ward; the guardian's location; the name of the judge and circuit in which the case is brought; and the number of wards served by each guardian, by ward county of residence. The database must have the ability to generate statewide and circuit-level statistical data to provide assistance to the courts.

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(c) The database established under this subsection must be accessible only by members of the judiciary and their direct staff. The database must restrict access to that information needed to perform an individual court personnel's duties, but in no way restrict access by judges and magistrates.

(2) On or after July 1, 2023, the Florida Clerks of Court Operations Corporation shall also establish a publicly accessible webpage to facilitate improving transparency of guardianship cases to the public.

(a) The Florida Clerks of Court Operations Corporation must generate monthly reports of statewide, circuit-level, and county-level statistical data to provide assistance to the courts and the Department of Elderly Affairs, and transparency to the public and policymakers, regarding the state's guardianship system. Such data reports must include only aggregated and deidentified data and must be published on the webpage established under this subsection.

(b) The webpage established under this subsection must include a database that is accessible to and searchable by the public. The database must be searchable by the name of a professional guardian to view current data regarding the number of wards served by that guardian, the counties of residence of such wards, and whether the wards are under limited or plenary guardianships. Such search may not allow access to personal identifying information of wards.

(3) The Office of Public and Professional Guardians is directed to share professional guardian registration and disciplinary action data for the purposes of this section.

(4) In addition to the reports required under paragraph

208562

(2)(a), the Florida Clerks of Court Operations Corporation must also generate reports using information in the databases established under subsection (1) or subsection (2) at the request of the Legislature, the judiciary, or the Department of Elderly Affairs.

(5)(a) By January 1, 2023, the Florida Clerks of Court Operations Corporation must provide the President of the Senate and the Speaker of the House of Representatives with a proposed list of specific data elements for inclusion in a database established pursuant to subsection (1) for regular judicial use. Additionally, the Florida Clerks of Court Operations Corporation must provide a proposed list of relevant data elements that may be considered for inclusion, in addition to those enumerated in paragraph (2)(b), in a publicly accessible and searchable database to be used for providing enhanced transparency of the state's guardianship cases to the public. Any data elements recommended for inclusion in the publicly searchable database must be established in a manner that ensures confidentiality of ward information.

(b) To develop the proposed lists of data points, the Florida Clerks of Court Operations Corporation shall engage with stakeholders, including, but not limited to, judicial officers and magistrates who handle guardianship and probate matters; the Florida State Guardianship Association; the Elder Law Section of The Florida Bar; the Real Property, Probate, and Trust Law Section of The Florida Bar; and the Department of Elderly Affairs, to obtain feedback for use in the development of specific data elements for any databases established in accordance with this section. The Florida Clerks of Court


208562

Operations Corporation must collaborate with the Office of the State Courts Administrator and the clerks of the court through the Florida Courts Technology Commission to implement the data elements and databases to achieve interoperability.

(6)(a) Beginning July 1, 2024, and annually thereafter through July 1, 2027, the Florida Clerks of Court Operations Corporation shall compile data maintained in the database that has been collected from the clerks of court and the Department of Elderly Affairs and submit such data to the Office of Program Policy Analysis and Government Accountability (OPPAGA).

(b) OPPAGA shall analyze the consolidated data compiled in accordance with paragraph (a) to evaluate trends in the use of guardianships in this state and conduct a comparative analysis of guardianship laws in other states. In conducting the analysis, OPPAGA shall consult with the Office of State Courts Administrator, the Clerks of Court Operations Corporation, the clerks of the court, and the Department of Elderly Affairs. OPPAGA shall submit a report containing findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 15, 2024, and annually thereafter through October 15, 2027.

(c) The data compiled and reported under paragraphs (a) and (b) must be produced in a statewide, circuit-level, and county-level statistical format. Such reports must include only aggregated and deidentified data. Further, the reports provided under paragraphs (a) and (b) may not contain personal identifying information of wards.

Section 2. Subsection (7) is added to section 744.2001, Florida Statutes, to read:

208562

744.2001 Office of Public and Professional Guardians.—There is created the Office of Public and Professional Guardians within the Department of Elderly Affairs.

(7) The Office of Public and Professional Guardians shall publish on its website a profile of each registered professional guardian. The profiles must be accessible and searchable by the public and must include, at a minimum, the guardian's name and business address, whether the guardian meets the education and bonding requirements under s. 744.2003, the number and type of substantiated complaints against the professional guardian, and any disciplinary actions taken by the Department of Elderly Affairs against the guardian. The Department of Elderly Affairs may adopt rules necessary to implement this subsection.

Section 3. For the 2022-2023 fiscal year, the sum of $2,400,000 in nonrecurring funds is appropriated from the General Revenue Fund to the Justice Administrative Commission for distribution to the Florida Clerks of Court Operations Corporation for the purpose of implementing this act.

Section 4. For the 2022-2023 fiscal year, the sums of $40,000 in recurring funds and $300,000 in nonrecurring funds are appropriated from the General Revenue Fund to the Department of Elderly Affairs for the purpose of implementing this act.

Section 5. 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 guardianship data transparency;

208562

creating s. 744.2112, F.S.; requiring the Florida Clerks of Court Operations Corporation and the clerks of court to establish a statewide database of guardianship data on or after a certain date; specifying requirements for the database; specifying database access restrictions; requiring the corporation and clerks of court to establish a webpage for certain purposes on or after a specified date; requiring the corporation to generate certain monthly reports; requiring that the webpage include a database meeting certain requirements; requiring the Office of Public and Professional Guardians to share certain data; requiring the corporation to generate certain reports at the request of certain entities; requiring the corporation to provide the Legislature with certain lists by a specified date; providing requirements for the corporation in developing such lists and in implementing data elements and databases; requiring the corporation to annually compile and submit certain data to the Office of Program Policy Analysis and Government Accountability (OPPAGA); requiring OPPAGA to conduct a certain analysis and submit annual reports to the Governor and the Legislature; specifying requirements for certain data and reports; amending s. 744.2001, F.S.; requiring the Office of Public and Professional Guardians to publish profiles of registered professional guardians on its website; specifying requirements for the profiles; authorizing the Department of Elderly Affairs to adopt

208562

rules; providing appropriations; providing an effective date.

SENATOR JENNIFER BRADLEY
5th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture, Environment, and General Government
Education
Ethics and Elections
Judiciary
Reapportionment

SELECT SUBCOMMITTEE:
Select Subcommittee on Congressional Reapportionment, *Chair*

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

January 26, 2022

Senator Kelli Stargel, Chair
Senate Committee on Appropriations
420 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Stargel:

I respectfully request that Senate Bill 1710 be placed on the committee's agenda at your earliest convenience. This bill relates to guardianship.

Thank you for your consideration.

Sincerely,

Jennifer Bradley

Jennifer Bradley

cc: Tim Sadberry, Staff Director
Alicia Weiss, 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

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2-28-22
Meeting Date

1710
Bill Number or Topic

Committee

285562
Amendment Barcode (if applicable)

Name Rey Contreras

Phone 352-665-7397

Address 4 Palm In
Street
Ponte Vedra FL 32082
City State Zip

Email Rey@MIAMItrial.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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S-001 (08/10/2021)

The Florida Senate

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2/28/22
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Appropriations
Committee

SB 172
Bill Number or Topic

208562
Amendment Barcode (if applicable)

Name RICK BLACK

Phone (804) 564-5330

Address 19825 N. COVE RD
Street SUITE B176
CORNELIUS NC 28031
City State Zip

Email rick@cearjustice.org

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

PLEASE CHECK ONE OF THE FOLLOWING:

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S-001 (08/10/2021)

March 2 FEB 28
Meeting Date

Committee

The Florida Senate
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SB 1710
Bill Number or Topic

Amendment Barcode (if applicable)

Name Becky Harber Phone

Address 7238 Conkle Rd Email Blue Mist 2005 @ Att.net
Street

Jonabor FL 32236
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

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The Florida Senate

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2/28/22	1710
Meeting Date	Bill Number or Topic
Appropriations	
Committee	Amendment Barcode (if applicable)

Name Victoria Heuler

Phone (850)421-2400

Address 1677 Mahan Center Blvd.
Street

Email victoria@hwelderlaw.com

Tallahassee FL 32308
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

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S-001 (08/10/2021)

The Florida Senate

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2/28/22
Meeting Date

Appropriations
Committee

1710
Bill Number or Topic

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:**

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S-001 (08/10/2021)

02/28/2022
Meeting Date

APPROPRIATIONS
Committee

The Florida Senate

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SB 1710
Bill Number or Topic

208562
Amendment Barcode (if applicable)

Name KEN BURKE

Phone 727-647-1859

Address 315 COURT ST 4th FLOOR
Street

Email KBURKE@MYPINELLASCLERK.ORG

CLEARWATER FL 33756
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:

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The Florida Senate

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2/28
Meeting Date

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Committee

1710
Bill Number or Topic

208562
Amendment Barcode (if applicable)

Name Victoria E. Heuler

Phone 850-212-5549

Address 1677 Mahan Center Blvd
Street

Email victoria@heuelerlaw.com

Tall. FL 32308
City State Zip

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

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2-28-22
Meeting Date

SB 1710
Bill Number or Topic

Committee

208562
Amendment Barcode (if applicable)

Name Doug Franks

Phone 678 570 3010

Address 1034 Justice Ln
Street

Email douglasFranks360@gmail.com

Acworth GA 30102
City *State* *Zip*

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

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SB 1710
Bill Number or Topic

Committee

208562
Amendment Barcode (if applicable)

Name MARCIA FRIEDMAN Phone 786-454-6705

Address Street

Email MEF0826@GMAIL

City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

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02 28 22
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Appropriations
Committee

SB 1710
Bill Number or Topic

208562
Amendment Barcode (if applicable)

Name Hillary Hoguel Phone

Address 5412 20th place Email
Street

Naples FL
City State Zip

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

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2-28-22
Meeting Date

1710
Bill Number or Topic

Committee

483144
Amendment Barcode (if applicable)

Name Rey Contreras

Phone 352-665-7397

Address 4 Palm Ln
Street

Email

Ponte Vedra FL 32082
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

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S-001 (08/10/2021)

The Florida Senate

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 Appropriations

BILL:	PCS/CS/SB 1728 (646840)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Banking and Insurance Committee; and Senator Boyd
SUBJECT:	Property Insurance
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold/Knudson	Knudson	BI	**Fav/CS**
2.	Sanders	Betta	AEG	**Recommend: Fav/CS**
3.	Sanders	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1728 addresses contractor solicitations related to property insurance roof claims, the type of homeowners' insurance coverage insurers must offer for roof losses, and various aspects of Citizens Property Insurance Corporation (Citizens or corporation).

Property Insurance Claims for Roof Damage

The bill allows contractors to make written or electronic communications that encourage, instruct, or induce a consumer to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage if such communication includes the following disclosures:

- The consumer is responsible for payment of any insurance deductible;
- It is insurance fraud punishable as a felony of the third degree for a contractor to pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to property covered by a property insurance policy; and
- It is insurance fraud punishable as a felony of the third degree to intentionally file an insurance claim containing any false, incomplete or misleading information.

The disclosures must be stated in a font size that is at least 12 points and at least half as large as the largest font used in the solicitation. With this change, contractors will no longer be prohibited

from making such solicitations so long as the solicitation includes the aforementioned disclosures.

The bill allows residential property insurers to offer only homeowners' insurance policies that reimburse roof losses on a depreciated value or actual cash value basis using a roof surface type reimbursement schedule, rather than on the basis of replacement costs. The bill thus creates an exception to the requirement an insurer must offer a homeowners policy that reimburses losses to the dwelling on the basis of replacement costs and also provides law and ordinance coverage, and must also provide a replacement cost reimbursement homeowners' policy that does not provide law and ordinance coverage. Currently, insurers may offer homeowner's insurance policies with roof surface type reimbursement schedules approved by the Office of Insurance Regulation (OIR), but must also offer policies that provide replacement cost reimbursement.

Additionally, the bill allows an insurer to issue homeowners' policies that provide coverage to the roof on a stated value basis. For example, instead of expressing the coverage in the form of a depreciating percentage over time, the stated value clearly provides the dollar value of the coverage of the roof.

A homeowners' policy that utilizes a roof surface replacement schedule or provides roof coverage on a stated value basis must provide replacement cost reimbursement for:

- Any roof surface type less than 10 years old;
- A covered total loss to a primary structure in accordance with the valued policy law; and
- A loss to the roof caused by a storm declared to be a hurricane by the National Hurricane Center.

Citizens Property Insurance Corporation

The bill requires certain appointed members of the Citizens Board of Governors (board) to have demonstrated expertise in insurance at the time of appointment or reappointment. The bill requires that on or after July 1, 2022, an appointee designated as chair must have demonstrated expertise in insurance and must have at least one experience serving on the board. The bill revises the term "demonstrated expertise in insurance" to mean at least ten years' experience:

- In property and casualty insurance as a full time employee, officer, or owner of a licensed insurance agency or an insurer authorized to transact property insurance in this state; or
- As an insurer regulator or as an executive or officer of an insurance trade association.

The bill also requires that the Citizens executive director must, at the time of appointment, have the experience, character and qualifications necessary to serve in that role for an insurer that has a certificate of authority to transact insurance in Florida.

The bill limits the application of the Citizens "glidepath" to personal lines residential policies covering an insured's *primary residence* and any commercial lines residential policy. "Glidepath" is the term commonly used to refer to the statutory limitation on rate increases that may be imposed on an individual Citizens policyholder. The maximum rate increase that may be

imposed on any single policy, excluding coverage changes and surcharges, is 11 percent for 2022.[1] Other properties would be charged the actuarially indicated rate.

The bill provides whenever such an offer is received by a Citizens policyholder, the risk is not eligible for Citizens coverage *unless* the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from Citizens. Under current law, Citizens policyholders remain eligible for coverage unless the offer from an authorized insurer is less than the policyholder's Citizens renewal premium.

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

The bill has an effective date of July 1, 2022.

II. Present Situation:

Florida Residential Property Insurance Market Data and CS/CS/CS/SB 76 (2021)

According to the Florida Office of Insurance Regulation (OIR), from 2017 through the second quarter of 2021, Florida domestic property insurers had cumulative net underwriting losses that resulted in a cumulative net income in excess of negative one billion dollars.[2]

Prior to the 2021 Legislative Session, the OIR reported an increasing trend of domestic property insurers filing for rate increases. Insurers submitted 105 rate filings in 2020 for increases of 10 percent or more, with the OIR approving 55 of those filings. In 2016, the OIR approved only six rate increases of at least 10 percent.[3]

In a presentation to the Florida Senate Committee on Banking and Insurance on January 12, 2021, the State Insurance Commissioner attributed the net underwriting losses, combined ratios, and resulting rate increases displayed above to several related trends and behaviors present in Florida's domestic property insurance market:

- Claims with litigation;
- Claims solicitation; and
- Adverse loss reserve development.[4]

[1] The maximum rate increase will increase by one percent for each subsequent year until it reaches 15 percent for 2026.
[2] David Altmaier, Florida Office of Insurance Regulation, Overview of the Florida Insurance Market, pg. 6 (Sept. 22, 2021). https://www.flsenate.gov/Committees/Show/BI/MeetingPacket/5252/9419_MeetingPacket_5252_2.pdf (last accessed Jan. 30, 2022).
[3] Florida Senate, *Meeting of the Committee on Banking and Insurance* (Jan. 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).
[4] Florida Senate, *Meeting of the Committee on Banking and Insurance* (Jan. 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).

In 2020, the OIR conducted a data call of Florida's domestic property insurers.[5] According to the State Insurance Commissioner, the results of the data call showed the severity of non-weather water claims with litigation is nearly double that of the claims that are closed without litigation.[6]

According to the OIR, the increased severity of claims involving litigation is driving adverse loss reserve development, leading to high rate filings.[7] Loss reserve development is the difference between the original loss as initially reserved by the insurer and its subsequent evaluation later or at the time of its final disposal.[8] When adverse loss reserve development occurs, the claim costs more than its reserve was originally estimated by the insurer.

In response to the aforementioned challenges in Florida's property insurance market, the 2021 Legislature passed CS/CS/CS/SB 76 (2021).[9] The bill addressed multiple aspects of the property insurance market, including solicitations regarding roof claims, notice of bringing a civil action in a property insurance dispute, attorney fee awards in first-party property insurance litigation, and the eligibility standards and ratemaking of Citizens.

Property Insurance Practices by Contractors

The 2021 property insurance law attempted to address increases in roof claims by prohibiting contractors, and persons acting on behalf of contractors, from:

- Soliciting residential property owners through prohibited advertisements, which are communications to a consumer that encourage, instruct, or induce a consumer to contact a contractor to file an insurance claim for roof damage;
- Offering the residential property owner consideration to perform a roof inspection or file an insurance claim;
- Offering or receiving consideration for referrals when property insurance proceeds are payable;
- Engaging in unlicensed public adjusting; and
- Providing an authorization agreement to the insured without providing a good faith estimate.

The above acts are subject to license discipline by the Department of Business and Professional Regulation and a $10,000 fine per violation. The law provides the residential property owner may void the contract with the contractor within 10 days of its execution if the contractor fails to provide notice to the residential property owner of the contractor's prohibited practices.

The law prohibits licensed contractors and subcontractors from advertising, soliciting, offering to handle, handling, or performing public adjuster (PA) services without a license. The prohibition does not prohibit the contractor from recommending the consumer consider contacting his or her insurer to determine if the proposed repair is covered by insurance.

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[5] https://www.floir.com/Sections/PandC/AssignmentofBenefits.aspx (last visited Jan. 27, 2021).
[6] Florida Senate, *Meeting of the Committee on Banking and Insurance* (Jan. 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).
[7] Florida Senate, *Meeting of the Committee on Banking and Insurance* (Jan. 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation)
[8] International Risk Management Institute, *Glossary*, https://www.irmi.com/term/insurance-definitions/loss-development (last visited Jan. 27, 2021).
[9] Ch. 2021-77, Laws of Florida.

The law prohibits a PA, PA apprentice, or person acting on behalf of a PA or PA apprentice, from offering financial inducements for allowing a roof inspection of residential property or making an insurance claim for roof damage. The law also prohibits them from offering or accepting consideration for referring services related to a roof claim. Each violation subjects the PA or PA licensee to up to a $10,000 fine. Unlicensed persons not otherwise exempted from PA licensure commit the unlicensed practice of public adjusting when they do these prohibited acts, and are subject to a $10,000 fine per act and the criminal penalty for unlicensed activity.

Regulations of Commercial Speech

The United States Supreme Court set forth the standards for analyzing whether a restriction on commercial speech[10] violates the First Amendment of the United States Constitution in the case of *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*.[11] Justice Powell succinctly set forth the standards.

> In commercial speech cases, then, a four-part analysis has developed. At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.[12]

The court explained in *Central Hudson* that if a law restricts commercial speech that address speech that is not misleading or related to unlawful activity, the government's power to regulate such speech is limited:

> If the communication is neither misleading nor related to unlawful activity, the government's power is more circumscribed. The State must assert a substantial interest to be achieved by restrictions on commercial speech. Moreover, the regulatory technique must be in proportion to that interest. The limitation on expression must be designed carefully to achieve the State's goal. Compliance with this requirement may be measured by two criteria. First, the restriction must directly advance the state interest involved; the regulation may not be sustained if it provides only ineffective or remote support for the government's purpose. Second, if the governmental interest could be served as well by a more limited restriction on commercial speech, the excessive restrictions cannot survive.

[10] Commercial speech is expression related solely to the economic interests of the speaker and its audience.
[11] 447 U.S. 557 (1980).
[12] See *Central Hudson Gas*, 447 US. 557 at pg. 565.

Florida Courts have applied the *Central Hudson* test to determine whether government restrictions on commercial speech violate article 1, section 4 of the Florida Constitution.[13]

The United State Supreme Court in *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, noted state laws that require disclosures in advertising do not receive the same degree of constitutional protection as a prohibition on commercial free speech.

> Because the extension of First Amendment protection to commercial speech is justified principally by the value to consumers of the information such speech provides, appellant's constitutionally protected interest in not providing any particular factual information in his advertising is minimal. An advertiser's rights are adequately protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers.[14]

The United States Supreme Court (Court) used the *Zauderer* test to uphold disclosure requirements in *Milavetz, Gallop & Milavetz, P.A., v. U.S.* In delivering the opinion of the Court, Supreme Court Associate Justice Sonia Sotomayor upheld disclosure requirements placed by federal law[15] upon debt relief agents that provide bankruptcy assistance for payment because "…the disclosures are intended to combat the problem of inherently misleading commercial advertisements… [and] … entail only an accurate statement of the advertiser's legal status and the character of the assistance provided."[16]

Federal Preliminary Injunction against Provisions of SB 76 Banning Prohibited Advertisements

On July 11, 2021, a federal district court enjoined the enforcement of the provisions of CS/CS/CS/SB 76 (2021) that ban contractors from making prohibited advertisements regarding property insurance roof claims.[17] Within the law, a prohibited advertisement is any written or electronic communication that encourages, instructs, or induces a consumer to contract a public adjuster or contractor for purposes of making an insurance claim for roof damage. The preliminary injunction prevents the enforcement of specific prohibitions in newly created s. 489.147, F.S., specifically (2)(a), (3), and (4)(b), F.S. These provisions are:

- (2)(a): A contractor may not directly or indirectly solicit a residential property owner by means of a prohibited advertisement;
- (3): A contractor who violates this section is subject to a disciplinary proceeding through Department of Business and Professional Regulation (DBPR) under s. 489.129, F.S., and is subject to a $10,000 fine for each violation; and
- (4)(b): An unlicensed person who violates s. 489.147, F.S., is subject to the penalties in s. 489.13, F.S., and is subject to a fine of up to $10,000 for each violation.

[13] See *Kortum v. Sink*, 54 So.3d 1012 (Fla. 1st DCA, 2010).
[14] *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, at pg. 628 (1985).
[15] 11 U.S.C. s. 528 (2006).
[16] *Milavetz, Gallop & Milavetz, P.A., v. U.S.*, 559 U.S. 229 at pg. 231 (2010).
[17] *Gale Force Roofing & Restoration, LLC v. Julie I. Brown*, 2021 WL 3046800, Case No. 4:21CV246-MW/MAF (U.S.D.C., N.D. Fla., Tallahassee Division) (Order Granting Preliminary Injunction, July 11, 2021).

The judge issued the injunction on the basis that these provisions of the bill violate First Amendment commercial free speech rights of contractors under the United States Constitution. The injunction against (3) and (4)(b) above only apply to the prohibited advertisement provision. The prohibitions in the s. 489.147, F.S., regarding roof claims that ban offering inducements to consumers, accepting or paying referral fees, interpreting the insurance policy, or signing a contract with a consumer for roof repairs without providing a good faith estimate remain valid and enforceable.

The judge did not enjoin enforcement of the rest of the bill, thus the only provisions affected are those mentioned above that were specifically addressed by the preliminary injunction order.

Replacement Cost and Actual Cash Value Loss Settlement Provisions

There are two primary settlement options available when purchasing a homeowner's property insurance policy: *replacement cost* and *actual cash value*. Replacement cost is usually defined in the policy as the cost to repair or replace the damaged property with materials of like kind and quality, without any deduction for depreciation.[18] Replacement cost is designed to cover the difference between what the property is actually worth and what it would cost to rebuild or repair that property.[19] Following a covered loss, the insurer assumes the full cost of repairing or replacing the damaged property.[20]

By contrast, actual cash value is the cost to repair or replace the damaged property with material of like kind and quality, minus the cost of depreciation due to use, wear, obsolescence, or age.[21] Following a covered loss, the insured assumes the cost to cover the difference between the depreciated value of the damaged property and the cost of repairing or replacing it.
Florida law currently requires insurers writing homeowner's property insurance policies to offer adjustment to the dwelling, including the roof, on the basis of replacement cost.[22] The OIR will approve policy forms that adjust roof losses on the basis of actual cash value, or the depreciated value of the roof. The insurer must, however, also offer replacement cost adjustment on the roof before issuing the policy.

Fannie Mae and Freddie Mac Minimum Insurance Requirements

The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) provide liquidity, stability, and affordability to the mortgage market by buying mortgages from lenders and either holding the mortgages in their own portfolios or packaging the mortgages into mortgage-based securities for purposes of selling in the secondary

[18] National Association of Insurance Commissioners, *Glossary of Insurance Terms*, https://content.naic.org/consumer_glossary.htm (last visited Jan. 4, 2021).
[19] See *Trinidad v. Florida Peninsula Ins. Co.*, 121 So.3d 433, 438 (Fla. 2013) (quoting *State Farm Fire & Cas. Co, v. Patrick*, 647 So.2d 983 (Fla. 3d DCA 1994))
[20] Insureds that elect for adjustment on the basis of replacement cost receive greater coverage than adjustment on the basis of actual cash value because depreciation is not excluded from replacement cost, whereas it is generally excluded from actual cash value. See *Trinidad* at 438 (quoting *Goff v. State Farm Florida Ins. Co.*, 999 So.2d 684, 689 (Fla. 2d DCA 2008))
[21] National Association of Insurance Commissioner, *Glossary of Insurance Terms*, https://content.naic.org/consumer_glossary.htm (last visited Jan. 4, 2021).
[22] Section 627.7011(1), F.S.

mortgage market.[23] Fannie Mae and Freddie Mac, in turn, protect their interest in each mortgage by requiring minimum insurance coverages and settlement on the basis of replacement cost.[24]

Fannie Mae does not accept a property insurance policy that limits or excludes coverage, in whole or in part, for windstorm, hurricane, hail damages, or any other perils that normally are included under an extended coverage endorsement.[25] The borrower may not obtain a property insurance policy that includes such limitation or exclusion unless the borrower is able to obtain a separate policy or endorsement from another insurer that provides adequate coverage for the limited or excluded peril, or from an insurance pool that the state has established to cover the limitation or exclusions.[26] For first-lien residential mortgages, Fannie Mae requires coverage equal to the lesser of the following:

- 100 percent of the insurable value of the improvements, as established by the property insurer; or
- The unpaid principal balance of the mortgage, as long as it at least equals the minimum amount (80 percent of the insurable value of the improvements) required to compensate for damage or loss on a replacement cost basis.[27]

Freddie Mac does not accept a property insurance policy that excludes coverage for loss or damage from fire, lightning, and other perils, including windstorm, hail, explosion, riot, civil commotion, damage by aircraft, damage by vehicles, and damage by smoke, covered within the scope standard extended coverage.[28] The borrower may not obtain a property insurance policy that includes such exclusion unless the borrower is able to obtain a separate policy or endorsement from another insurer that provides adequate coverage for the limited or excluded peril, or from an insurance pool the state has established to cover the limitation or exclusions.[29] For one-to-four unit residential properties, Freddie Mac requires coverage at least equal to the higher of the following, not to exceed the replacement cost of the insurable improvements:

- The unpaid principal balance of the mortgage; or
- Eighty percent of the full replacement cost of the insurable improvements.[30]

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[23] Federal House Finance Agency, *About Fannie Mae and Freddie Mac*, https://www.fhfa.gov/about-fannie-mae-freddie-mac (last visited Jan. 28, 2022).
[24] Fannie Mae, *Selling Guide: Fannie Mae Single Family* (Dec. 15, 2021), https://singlefamily.fanniemae.com/media/30286/display#page=905 (last visited Jan. 28, 2022); Freddie Mac, *Minimum Property Insurance Types and Amounts* (November 4, 2020), https://guide.freddiemac.com/app/guide/section/4703.2 (last visited Jan. 28, 2022).
[25] *See* Fannie Mae, *Selling Guide: Fannie Mae Single Family* (Dec. 15, 2021), https://singlefamily.fanniemae.com/media/30286/display#page=905 (last visited Jan. 28, 2022); Extended coverage must include, at minimum, wind, hurricane, civil commotion (including riots), smoke, hail, and damages caused by aircraft, vehicle, or explosion. Typhoon coverage is required for security properties located in Guam.
[26] *Id.*
[27] *Id.*
[28] Freddie Mac, *Minimum Property Insurance Types and Amounts* (Nov. 4, 2020), https://guide.freddiemac.com/app/guide/section/4703.2 (last visited Jan. 28, 2022).

[29] *Id.*
[30] *Id.*

Roof Surface Payment Schedules

A roof surface payment schedule, sometimes referred to in residential property insurance policies as a roof surfacing loss percentage table, is a depreciation table that states upfront, in either the individual policy or endorsement, the cost the insurer will assume following a covered loss, expressed as a percentage of the loss amount. The depreciation rates in a roof surface payment schedule generally vary by the age of the roof and type of roof to account for differences in estimated roof lifespans based on roof surface material type.

The roof surface payment schedule example below from Nevada demonstrates the variance in depreciation rates between roof surface material types over time.

Roof Surface Payment Schedule[31]								
The percentages shown for the type of roofing surface are applied to all components and installation including overhead, profit, labor, taxes, and fees associated with the replacement of the roofing system.								
	Roof Surface Material Type							
Age of Roof in Years	**Class 3 or 4 Impact Resistant, Synthetic, Plastic, or Architectural Composition Shingles**	**All Other Composition or Solar Shingles**	**Wood Shingles or Shakes**	**Metal Shingles or Panels**	**Concrete Tile, Fiber Cement Tile, or Clay Tile**	**Slate**	**Built-up Tar With or Without Gravel, Rubber, Membrane, or Other Flat Roof Surface**	**All Other Roof Types**
0	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**
1	**97%**	**96%**	**97%**	**98%**	**98%**	**99%**	**95%**	**95%**
2	**94%**	**92%**	**94%**	**96%**	**96%**	**98%**	**90%**	**90%**
3	**91%**	**88%**	**91%**	**94%**	**94%**	**97%**	**85%**	**85%**
4	**88%**	**84%**	**88%**	**92%**	**92%**	**96%**	**80%**	**80%**
5	**85%**	**80%**	**85%**	**90%**	**90%**	**95%**	**75%**	**75%**
6	**82%**	**76%**	**82%**	**88%**	**88%**	**94%**	**70%**	**70%**
7	**79%**	**72%**	**79%**	**86%**	**86%**	**93%**	**65%**	**65%**
8	**76%**	**68%**	**76%**	**84%**	**84%**	**92%**	**60%**	**60%**
9	**73%**	**64%**	**73%**	**82%**	**82%**	**91%**	**55%**	**55%**
10	**70%**	**60%**	**70%**	**80%**	**80%**	**90%**	**50%**	**50%**
11	**67%**	**56%**	**67%**	**78%**	**78%**	**89%**	**45%**	**45%**
12	**64%**	**52%**	**64%**	**76%**	**76%**	**88%**	**40%**	**40%**
13	**61%**	**48%**	**61%**	**74%**	**74%**	**87%**	**35%**	**35%**
14	**58%**	**44%**	**58%**	**72%**	**72%**	**86%**	**30%**	**30%**
15	**55%**	**40%**	**55%**	**70%**	**70%**	**85%**	*****	*****
16	**52%**	**36%**	**52%**	**68%**	**68%**	**84%**		
17	**49%**	**32%**	**49%**	**66%**	**66%**	**83%**		
18	**46%**	**28%**	**46%**	**64%**	**64%**	**82%**		
19	**43%**	**	**43%**	**62%**	**62%**	**81%**		
20	**40%**		**40%**	**60%**	**60%**	**80%**		
21	**37%**		**37%**	**58%**	**58%**	**79%**		
22	**34%**		**34%**	**56%**	**56%**	**78%**		
23	**31%**		**31%**	**54%**	**54%**	**77%**		
24	**28%**		**28%**	**52%**	**52%**	**76%**		
25	*		*	**50%**	**50%**	**75%**		
26				**48%**	**48%**	**74%**		
27				**46%**	**46%**	**73%**		
28				**44%**	**44%**	**72%**		
29				**42%**	**42%**	**71%**		
30				***	***	****		

* 25 percent payable for 25 years or over; ** 25 percent payable for 19 years or over; *** 40 percent payable for 30 years or over; **** 70 percent payable for 30 years or over; ***** 25 percent payable for 15 years or over

[31] Nevada Division of Insurance, *American Family Insurance Group – HO 88 02 01 14: Roof Surface Payment Schedule*, http://doi.nv.gov/uploadedFiles/doinvgov/_public-documents/Consumers/Home/American_Family/HO_88_02_01_14.pdf (last visited Jan. 28, 2022).

Valued Policy Law

Florida's Valued Policy Law (VPL)[32] has been in effect since 1899[33] and requires the insurer to set the value of the insured property in the event of a total loss.[34] The VPL originally applied to damages caused by fire and lightning; however, in 1982, the Legislature extended VPL to all covered perils under ch. 82-243, s. 539, L.O.F.[35] In the event of a total loss caused by a covered peril, where the covered peril alone would have caused the loss, an insurer's liability under a property insurance policy equals the total coverage limit for which a premium was paid.[36] However, in the event of total loss caused in part by a covered peril and in part by a noncovered peril, the insurer's liability is limited to the amount of the loss caused by the covered peril.[37]

Florida's VPL currently applies to the total loss of buildings, structures, mobile homes, or manufactured buildings located in Florida and insured as to a covered peril. While it does not differentiate between residential and commercial property, it does not cover policies issued by surplus lines insurers.

Citizens Property Insurance Corporation—Overview

Citizens Property Insurance Corporation (Citizens or corporation) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.[38] Citizens is not a private insurance company.[39] Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA).

Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight member Board of Governors (board) that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission.[40] The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the board.[41] Citizens is subject to regulation by the Florida Office of Insurance Regulation (OIR).

Citizens has three different accounts through which it offers property insurance: a personal lines account, a commercial lines account, and a coastal account.

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[32] Section 627.702, F.S.
[33] *Florida Farm Bureau Cas. Ins. Co. v. Cox*, 967 So. 2d 815, 818 (Fla. 2007).
[34] *Id*.
[35] *Id*. The Legislature amended the VPL in 2005 after *Mierzwa v Florida Windstorm Underwriting Ass'n*, 877 So.2d 774 (Fla. 4th DCA 2004) was released, "expressly providing that "when a loss was caused in part by a covered peril and in part by a noncovered peril, paragraph (a) does not apply. In such circumstances, the insurer's liability under this section shall be limited to the amount of the loss caused by the covered peril. See s. 627.702(1)(b), F.S. (2005)."
[36] Section 627.702(1)(a), F.S.
[37] Section 627.702(1)(b), F.S.
[38] Admitted market means insurance companies licensed to transact insurance in Florida.
[39] Section 627.351(6)(a)1., F.S.
[40] Section 627.351(6)(a)2., F.S.
[41] Section 627.351(6)(c)4.a., F.S.

Citizens' Accounts

The Personal Lines Account (PLA) offers personal lines residential policies that provide comprehensive, multi-peril coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners, mobile home owners, dwellings, tenants, and condominium unit owner's policies.[42]

The Commercial Lines Account (CLA) offers commercial lines residential and non-residential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial non-residential policies covering business properties.[43]

The Coastal Account offers personal residential, commercial residential, and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multi-peril policies.[44]

The Citizens policyholder eligibility clearinghouse program was established by the Legislature in 2013.[45] Under the program, new and renewal policies for Citizens are placed into the clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens.[46]

Current Policies

As of December 31, 2021, Citizens reports 759,305 policies in-force with a total exposure of $232,502,323,529.[47] The chart below outlines Citizens account and product type, number of policies in-force, total exposure and premium with surcharges.

[42] *See* s. 627.351(6)(b)2.a., F.S., and *Account History and Characteristics*, Citizens Property Insurance Corporation, https://www.citizensfla.com/documents/20702/1183352/20160315+05A+Citizens+Account+History.pdf/31f51358-7105-40e9-aa75-597f51a99563 (March 2016) (last visited Jan. 22, 2022).
[43] *Id.*
[44] *Id.*
[45] Section 10, ch. 2013-60, L.O.F.
[46] Section 627.3518(2)-(3), F.S.
[47] Citizens Property Insurance, *About Us, Snapshot, December 31, 2021*, https://www.citizensfla.com/-/20211231-policies-in-force (last visited Jan. 22, 2022).

Account	Product Line	Policies In-Force	Total Exposure	Premium with Surcharges
PLA	Personal Residential Multiperil (PR-M)	589,028	167,886,789,888	1,280,496,248
Coastal	Personal Residential Multiperil (PR-M)	98,105	23,245,226,192	278,331,349
Coastal	Personal Residential Wind-Only (PR-W)	67,342	28,784,726,623	178,916,825
Coastal	Commercial Residential Multiperil (CR-M)	111	592,392,383	2,789,952
Coastal	Commercial Residential Wind-Only (CR-W)	1,749	5,682,636,307	33,449,678
Coastal	Commercial Non-Residential Multiperil (CNR-M)	39	48,588,500	569,765
Coastal	Commercial Non-Residential Wind-Only (CNR-W)	2,212	1,837,291,826	23,692,614
CLA	Commercial Residential Multiperil (CR-M)	580	4,289,395,010	17,091,136
CLA	Commercial Non-Residential Multiperil (CNR-M)	139	135,276,800	879,248
	Total	759,305	232,502,323,529	1,816,216,815

Source: Citizens Property Insurance[48]

These numbers do not reflect policies tagged for takeout via Citizens' depopulation program but still serviced by Citizens.[49] From December, 2020 to December, 2021, Citizens' policy count grew by nearly 40 percent, adding 216,566 total policies in force.[50] Citizens has expressed it expects to exceed one million policies in force in 2022.[51]

Citizens Glidepath Rates

From 2007 until 2010, Citizens' rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a "glidepath" to impose annual rate increases up to a level that is actuarially sound. Under the original established glidepath, Citizens had to implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges. In 2021, the Legislature revised this glidepath to increase it one percent per year to 15 percent, as follows: [52]

- 11 percent for 2022.
- 12 percent for 2023.

[48] *Id.* This table does not include policies tagged for takeout via the Depopulation Program but still serviced by Citizens.
[49] *Id.*
[50] Citizens Property Insurance Corporation, *Policies in Force*, https://www.citizensfla.com/policies-in-force (last visited Jan. 22, 2022).
[51] Citizens Property Insurance Corporation, *Press Release: Citizens Board approves 2022 rate recommendations* (December 15, 2021), *available at* https://www.citizensfla.com/-/20211215-citizens-board-approves-2022-rate-recommendations.
[52] Section 627.351(6)(n)5., F.S.

- 13 percent for 2024.
- 14 percent for 2025.
- 15 percent for 2026 and all subsequent years.

The implementation of this increase ceases when Citizens has achieved actuarially sound rates.[53] In addition to the overall glidepath rate increase, Citizens can increase its rates to recover the additional reimbursement premium it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the Florida Hurricane Catastrophe Fund coverage, pursuant to s. 215.555(5)(b), F.S.[54]

Citizens Financial Resources

Citizens' financial resources include insurance premiums, investment income, and operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private reinsurance, policyholder surcharges, and regular and emergency assessments. Non-weather water losses, reinsurance costs and litigation are currently the major determinants of insurance rates.[55] In the event of a catastrophic storm or series of smaller storms, reserves could be exhausted, leaving Citizens unable to pay all claims.[56] Under Florida law, if the Citizens' Board of Directors determines a Citizens' account has a projected deficit, Citizens is authorized to levy assessments[57] on its policyholders and on each line of property and casualty line of business other than workers' compensation insurance and medical malpractice insurance.[58] Citizens may impose three assessment tiers and their sequence is as follows:[59]

Citizens Policyholder Surcharge – A surcharge of up to 15 percent of premium on all Citizens' policies, collected upon issuance or renewal. This 15 percent assessment can be levied for each of the three Citizens' accounts—the CLA, the PLA, and the Coastal Account— that project a deficit. Thus, the total maximum premium surcharge a policyholder could be assessed is 45 percent.[60]

Regular Assessment – If the Citizens' surcharge is insufficient to cure the deficit for the coastal account, Citizens can require an assessment against all other insurers except medical malpractice and workers' compensation. The assessment may be recouped from policyholders through a rate filing process of up to two percent of premium or two percent of the deficit, whichever is greater.[61] This assessment is not levied against Citizens' policyholders.

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[53] Section 627.351(6)(n)7., F.S.
[54] Section 627.351(6)(n)6., F.S.
[55] Citizens Property Insurance Corporation, *2022 Rate Kit, Citizens 2021 Rates, Frequently Asked Questions*, https://www.citizensfla.com/documents/20702/15725518/20211213+2022+Rate+Kit.pdf/328181e5-1c41-a28d-76ea-b7d911462c6a?t=1639433573548 (last visited Jan. 22, 2022).
[56] Citizens Property Insurance Corporation, *Insurance/Insurance 101/Assessments*, https://www.citizensfla.com/assessments (last visited Jan. 22, 2022).
[57] Assessments are charges that Citizens and non-Citizens policyholders can be required to pay, in addition to their regular policy premiums.
[58] Accident and health insurance and policies written under the National Flood Insurance Program or the Federal Crop Insurance Program are not assessable types of property and casualty insurance. Surplus lines insurers are not assessable, but their policyholders are. Section 627.351.(6)(b)3.f.-h., F.S.
[59] Citizens Property Insurance Corporation, *supra* note 56.
[60] Sections 627.351.(6)(b)3.i.(I) and 627.351.(6)(c)21., F.S. *See also*, Citizens Property Insurance Corporation, *supra* note 56.
[61] Section 627.351.(6)(b)3.a., F.S.

Emergency Assessment – Requires any remaining deficit for Citizens' three accounts be funded by multi-year emergency assessments on all insurance policyholders (except medical malpractice and workers' compensation), including Citizens' policyholders. This assessment may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.[62]

Eligibility for Insurance in Citizens

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for insurance in Citizens and provides specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens has additional eligibility requirements set out in their underwriting rules. These rules are approved by the OIR and are set out in Citizens' underwriting manuals.[63]

Eligibility Based on Premium Amount

An applicant for residential insurance cannot buy insurance in Citizens if an authorized insurer in the private market offers the applicant insurance for a premium that does not exceed the Citizens premium by 20 percent or more. [64] In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage.

A residential policyholder cannot renew insurance in Citizens if an authorized insurer offers to insure the property at a premium equal to or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the eligibility requirement for renewal premium to apply.[65]

Eligibility Based on Value of Property Insured

In addition to the eligibility restrictions based on premium amount, current law provides eligibility restrictions for homes and condominium units based on the value of the property insured.[66] Structures with a dwelling replacement cost of $700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, are not eligible for coverage with Citizens.[67] However, Citizens is allowed to insure structures with a dwelling replacement cost or a condominium unit with a dwelling and contents replacement cost of one million dollars or less in Miami-Dade and Monroe counties, after the OIR determined these counties to be non-competitive.[68]

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[62] Section 627.351(6)(b)3.d., F.S.
[63] *See* Citizens Property Insurance Corporation *Revised Underwriting Manuals*, https://www.citizensfla.com/-/20160329-revised-underwriting-manuals (last visited Jan. 22, 2022).
[64] Section 627.351(6)(c)5., F.S.
[65] Section 627.351(6)(c)5., F.S.
[66] Section 627.351(6)(a)3., F.S.
[67] Section 627.351(6)(a)3.d., F.S.
[68] Office of Insurance Regulation, Final Order Case No: 165625-14 (Dec. 22, 2014), a*vailable at* https://www.floir.com/siteDocuments/Citizens165625-14-O.pdf) (last visited Jan. 22, 2022). *See also*

Citizens Depopulation

Florida law requires Citizens to create programs to help return Citizens policies to the private market and reduce the risk of additional assessments for all Floridians.[69] In 2016, the Legislature passed requirements that Citizens, by January 1, 2017, amend its operations relating to takeout agreements.[70] As part of these updated requirements, codified under s. 627.351(6)(ii), F.S., a policy may not be taken out of Citizens unless Citizens:

- Publishes a periodic schedule of cycles during which an insurer may identify, and notify Citizens of, policies the insurer is requesting to take out;[71]
- Maintains and makes available to the agent of record a consolidated list of all insurers requesting to take-out a policy; such list must include a description of the coverage offered and the estimated premium for each take-out request; and
- Provides written notice to the policyholder and the agent of record regarding all insurers requesting to take-out the policy and regarding the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with the corporation. The notice must be in a format prescribed by the corporation and include, for each take-out offer:
  - The amount of the estimated premium;
  - A description of the coverage; and
  - A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

III. Effect of Proposed Changes:

Prohibition against Contractor Solicitations to Make Insurance Claims for Roof Damage

Section 1 amends s. 489.147(1)(a), F.S., to revise the definition of a prohibited advertisement, which current law prohibits. The term is currently defined as any written or electronic communication by a contractor which encourages, instructs, or induces a consumer to contact a contractor or public adjuster, for making an insurance claim for roof damage. The bill revises the definition by providing a prohibited advertisement means any such written or electronic communication that does not include the following disclosures:

- The consumer is responsible for payment of any insurance deductible;
- It is insurance fraud punishable as a felony of the third degree for a contractor to pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to property covered by a property insurance policy; and
- It is insurance fraud punishable as a felony of the third degree to intentionally file an insurance claim containing any false, incomplete or misleading information.

The disclosures must be stated in a font size that is at least 12 points and at least half a large as the largest font used in the solicitation.

Section 627.351(6)(a)3.d., F.S., and Citizens Property Insurance Corporation, *Update to Maximum Coverage Limits, November 12, 2019* https://www.citizensfla.com/-/2019-roof-permits-acceptable-for-fbc-credits.

[69] Section 627.351(6)(q)3.a., F.S.

[70] Chapter 2016-229, L.O.F.

[71] Such requests from insurers must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.

With this change, contractors will no longer be prohibited from making such solicitations so long as the solicitation includes the aforementioned disclosures.

Citizens Property Insurance Corporation

Section 2 amends s. 627.351(6), F.S., regarding Citizens Property Insurance Corporation (Citizens or corporation), the governmental entity that provides residential and commercial property insurance to applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market.

Eligibility for Citizens Coverage – Determining Replacement Cost

The bill amends s. 627.351(6)(a), F.S., to require that Citizens use a method for valuing dwelling replacement cost, which is approved by the Office of Insurance Regulation (OIR), when enforcing the requirement that structures and single condominium units with a replacement cost above the statutory threshold are ineligible for Citizens. Currently, structures and single condominium units with a replacement cost above $700,000 are ineligible for Citizens coverage unless the dwelling or single condominium unit is located in a county where the OIR has determined there is not a reasonable degree of competition. In a county where there is not a reasonable degree of competition, which is currently Miami-Dade County and Monroe County, structures and single condominium units are ineligible for Citizens if the replacement cost is one million dollars or more.

The bill also deletes unnecessary language related to Citizens eligibility that ceased to be effective on January 1, 2017.

Eligibility for Citizens Coverage – Existing Citizens Policyholders

The bill amends s. 627.351(6)(c)5., F.S., to increase the likelihood that a current Citizens policyholder with a personal lines or commercial lines residential policy will be made ineligible for Citizens by receiving an offer of coverage from an authorized insurer at renewal. Specifically, the bill provides whenever such an offer is received by a Citizens policyholder, the risk is not eligible for Citizens coverage *unless* the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from Citizens. Thus, a current Citizens policyholder may not renew Citizens coverage if the policyholder receives an offer of comparable coverage at renewal from an authorized insurer at a premium that is not more than 20 percent higher than the Citizens renewal premium.

Furthermore, **Section 3** of the bill amends s. 627.3518(5), F.S., to apply the revised eligibility criteria to policies in the Citizens clearinghouse.

Governance of Citizens – Qualifications to Serve on the Board of Governors or as Executive Director

The bill amends s. 627.351(6)(c)4., F.S., to increase the insurance expertise required of certain appointed members of the Citizens Board of Governors (board) at the time of appointment or reappointment. On or after July 1, 2022, an appointee designated as chair must have demonstrated expertise in insurance or must have at least one year of experience serving on the

board. The executive director of Citizens is required, at the time of appointment, to have must have the qualifications necessary to serve in that role for an insurer that has a certificate of authority to transact insurance in Florida.

Under current law, at least one of the two members of the board appointed by each appointing officer[72] must have "demonstrated expertise in insurance." The bill specifies the demonstrated expertise in insurance must be at least 10 years' experience with property and casualty insurance as a full-time employee, officer, or owner of a licensed insurance agency, an insurer authorized to transact property insurance in Florida, an insurance regulator or as an executive director or officer of an insurance trade association.

The bill also specifies the executive director of Citizens must, at the time of appointment, have the experience, character, and qualification required under s. 624.404(3), F.S., to serve as the chief executive officer of an insurer.

Section 624.404(3), F.S., contains a number of requirements a person must meet to be the chief executive officer of an authorized insurer in Florida. The statute prohibits the OIR from authorizing an insurer to transact insurance in Florida if the management, officers, or directors are found by the OIR to be:

- Incompetent or untrustworthy;
- So lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance buying public;
- So lacking in insurance experience, ability, and standing as to jeopardize the reasonable promise of success operation; or
- A person the OIR has good reason to believe is affiliated directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders or stockholders, or investors, or creditors or of the public, by manipulation of assets, accounts, or reinsurance or by bad faith.

The OIR is also prohibited by s. 624.404(3), F.S., from authorizing an insurer who exercises or has the ability to exercise control, or who influences or has the ability to influence the transaction of the business of the insurer, does not possess the financial standing and business experience for the successful operation of the insurer.

Under s. 624.404(3), F.S., an authorized insurer must immediately remove a person who exercises, or has the ability to exercise, effective control of an insurer if such person:

- Has been found guilty of, or has pleaded guilty or nolo contendere to, any felony or crime punishable by imprisonment of one year or more of any state or country; or
- Was in the past affiliated directly or indirectly, through ownership interest of 10 percent or more, control, or reinsurance transactions, with any business, corporation, or entity that has been found guilty of or plead nolo contendere to any felony or crime punishable by imprisonment for one year or more under the laws of any state or country.

[72] The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House.

Under the bill, the executive director of Citizens would have be required to meet these requirements.

Rates for Citizens Coverage – Narrowing the Scope of Application of the Citizens Glidepath

The bill amends s. 627.351(6)(n), F.S., which sets for the standards for Citizens rates. The bill limits the application of the Citizens "glidepath" to personal lines residential policies covering an insured's *primary residence* and any commercial lines residential policy. "Glidepath" is the term commonly used to refer to the statutory limitation on rate increases that may be imposed on an individual Citizens policyholder. The maximum rate increase that may be imposed on any single policy, excluding coverage changes and surcharges, is 11 percent for 2022.[73] This limit on rate increases is notwithstanding the requirement that rates for Citizens coverage must be actuarially sound and are subject to the standards of s. 627.062, F.S., of the Rating Law.

The bill defines a primary residence as the dwelling an insured has represented as their permanent home on the insurance application or otherwise to the corporation. Thus, going forward, a personal lines residential policy that does not cover a primary residence (for instance, a second home) will have to pay an actuarially sound rate. The fiscal impact of this change on policyholders and the corporation is examined in **Section V, Fiscal Impact Statement** below.

Citizens Clearinghouse

Section 3 of the bill amends s. 627.3518(5), F.S., to apply the revised eligibility criteria to policies in the Citizens clearinghouse. Accordingly, if an offer of coverage from an authorized insurer is received by a Citizens policyholder through the clearinghouse, the risk is not eligible for Citizens coverage *unless* the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from Citizens.

Reimbursement of Roof Losses – Actual Cash Value Reimbursement

Section 4 amends s. 627.7011(5), F.S., to allow residential property insurers to offer only homeowners' insurance policies (form HO-3) that reimburse roof losses on a depreciated value or actual cash value basis using a roof surface type reimbursement schedule, rather than on the basis of replacement costs. The bill thus creates an exception to the requirement an insurer must offer a homeowners policy that reimburses losses to the dwelling on the basis of replacement costs and also provides law and ordinance coverage, and must also provide a replacement cost reimbursement homeowners' policy that does not provide law and ordinance coverage. Currently, insurers may offer homeowner's insurance policies with roof surface type reimbursement schedules approved by the OIR, but must also offer policies that provide replacement cost reimbursement.

The bill requires that a roof surface type reimbursement schedule used to calculate the actual cash value coverage that is provided for the roof must provide reimbursement for the repair, replacement, and installation of a roof based on the annual age of the roof surface type. The annual depreciation amounts must be actuarially justified, meet the requirements of s. 627.062, F.S., (which governs homeowners' insurance rate filings) and may not exceed four percent

[73] The maximum rate increase will increase by one percent for each subsequent year until it reaches 15 percent for 2026.

unless actuarially justified. The roof surface type reimbursement schedule must be approved by the OIR.

Roof surface type reimbursement schedules must be furnished along with the personal lines residential property insurance policy at the time of issuance or renewal, and must include the following notice at the top of the schedule in no smaller than 12-point uppercase and boldfaced type:

> PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO PURCHASE COVERAGE ON YOUR ROOF ACCORDING TO A ROOF SURFACE TYPE REIMBURSEMENT SCHEDULE. IF YOUR ROOF IS DAMAGED BY A COVERED PERIL, YOU WILL RECEIVE A PAYMENT AMOUNT FOR YOUR ROOF ACCORDING TO THE SCHEDULE BELOW. BE ADVISED THIS MAY RESULT IN YOUR HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR ROOF. PLEASE DISCUSS WITH YOUR INSURANCE AGENT.

A homeowners' policy that utilizes a roof surface replacement schedule must provide replacement cost reimbursement for:
- Any roof surface type less than 10 years old;
- A covered total loss to a primary structure in accordance with the valued policy law; and
- A loss to the roof caused by a storm declared to be a hurricane by the National Hurricane Center.

The bill clarifies an insurer offering policies that provide roof coverage using a roof covering reimbursement schedule may also offer policies that provide roof reimbursement on the basis of replacement costs.

Reimbursement of Roof Losses – Stated Value Coverage

Additionally, the bill allows an insurer to issue homeowner's policies that provide coverage to the roof on a stated value basis. For example, instead of expressing the coverage in the form of a depreciating percentage over time, the stated value clearly provides the dollar value of the coverage of the roof. An insurer may limit its offering to the stated value coverage option, but may also offer replacement cost coverage or a roof reimbursement schedule.

Notwithstanding the stated value of coverage, the homeowners' policy must provide full replacement cost reimbursement for:
- Any roof surface type less than 10 years old;
- A covered total loss to a primary structure in accordance with the valued policy law; and
- A loss to the roof caused by a storm declared to be a hurricane by the National Hurricane Center.

An insurer utilizing a stated value sublimit of coverage must include in the policy documents at issuance and at renewal, in bold type of at least 12 points, the following statement:

PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO PURCHASE A STATED VALUE SUBLIMIT OF COVERAGE ON YOUR ROOF. BE ADVISED THAT THIS MAY RESULT IN YOU HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR ROOF. PLEASE DISCUSS WITH YOUR INSURANCE AGENT.

The bill clarifies an insurer offering policies that provide roof reimbursement at a stated value sublimit of coverage may also offer policies that provide roof reimbursement on the basis of replacement costs.

Other Bill Sections

Sections 5, 6, and 7 of the bill reenact certain sections of the Florida Statutes to incorporate the amendments made by this bill.

Section 8 provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Section 1 of the bill revises the currently existing prohibition against contractors making prohibited advertisements related to insurance claims for roof damage. Under the bill, such communications are not prohibited if certain disclosures regarding insurance fraud and property insurance deductibles are included in the advertisement. Background on United States Supreme Court cases relevant to this topic is included on pages 4 through 6 of this Staff Analysis.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill limits application of the Citizens glidepath on rates, which is the statutory provision that provides that no single residential policy insured by Citizens may incur an annual rate increase above a certain threshold – 11 percent in 2022, exclusive of coverage changes and surcharges. Under the bill, the glidepath is applied to only primary residences. Thus, Citizens will charge a premium based on an actuarially sound rate to non-primary residences (such as second homes). According to the most recent Citizens rate filing, the statewide average actuarially indicated rate for personal lines policies would require an average rate increase of 34.9 percent.[74] Application of the glidepath limit resulted in Citizens proposing an average rate increase of 8.6 percent for 2022.[75] Under the bill, an additional rate increase averaging 26.3 percent would be imposed on a non-primary residences.

C. Government Sector Impact:

The provisions of the bill intended to depopulate Citizens – making current Citizens policyholders ineligible for Citizens coverage upon receiving an offer from an authorized insurer unless the premium is more than 20 percent higher than the Citizens renewal premium, and limiting application of the Citizens glidepath – will result in Citizens having a lower number of policies and collecting more premium from some policyholders. To the extent that the bill reduces Citizens policy count or slows the growth of the policy count, it will reduce the likelihood of Citizens running a deficit and having to impose surcharges and assessments on policyholders.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 489.147, 627.351, 627.3518, and 627.7011.

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[74] Citizens Property Insurance Corporation, *2022 Rate Kit*, pg. 6 (Dec. 13, 2021). https://www.citizensfla.com/documents/20702/15725518/20211213+2022+Rate+Kit.pdf/328181e5-1c41-a28d-76ea-b7d911462c6a?t=1639433573548 (last visited Jan. 29, 2022).

[75] See *id*.

IX. Additional Information:

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

PCS (646840) by Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government):
The proposed committee substitute:

- Requires certain appointed members of the Citizens Board of Governors (board) to have demonstrated expertise in insurance at the time of appointment or reappointment.
- Requires on or after July 1, 2022, an appointee designated as chair must have demonstrated expertise in insurance and must have at least one experience serving on the board.
- Revises the term "demonstrated expertise in insurance" to mean at least ten years' experience:
  - In property and casualty insurance as a full time employee, officer, or owner of a licensed insurance agency or an insurer authorized to transact property insurance in this state; or
  - As an insurer regulator or as an executive or officer of an insurance trade association.

CS by Banking and Insurance on February 2, 2022:
The committee substitute:

- Removes the provisions related to Surplus Lines and public records exemptions in s. 627.351, F.S, of the underlying bill; and
- Makes a technical change restoring current law related to Citizens' polices removed from the corporation through an assumption agreement.

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	.	
03/02/2022	.	
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The Committee on Appropriations (Boyd) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (a) of subsection (1) of section 489.147, Florida Statutes, is amended to read:

489.147 Prohibited property insurance practices.—

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

(a) "Prohibited advertisement" means any written or electronic communication by a contractor which ~~that~~ encourages,

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instructs, or induces a consumer to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage, if such communication does not state in a font size of at least 12 points and at least half as large as the largest font size used in the communication that:

1. The consumer is responsible for payment of any insurance deductible;

2. It is insurance fraud punishable as a felony of the third degree for a contractor to pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to property covered by a property insurance policy; and

3. It is insurance fraud punishable as a felony of the third degree to intentionally file an insurance claim containing any false, incomplete, or misleading information.

The term includes, but is not limited to, door hangers, business cards, magnets, flyers, pamphlets, and e-mails.

Section 2. Subsection (2) of section 627.021, Florida Statutes, is amended to read:

627.021 Scope of this part.—

(2) This part does not apply to:

(a) Reinsurance, except joint reinsurance as provided in s. 627.311.

(b) Insurance against loss of or damage to aircraft, their hulls, accessories, or equipment, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of aircraft.

(c) Insurance of vessels or craft, their cargoes, marine



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builders' risks, marine protection and indemnity, or other risks commonly insured under marine insurance policies.

(d) Commercial inland marine insurance.

(e) Except as may be specifically stated to apply, surplus lines insurance placed under ~~the provisions of~~ ss. 626.913-626.937.

Section 3. Paragraphs (a), (b), (c), (n), (q), (x), and (ii) of subsection (6) of section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a) The public purpose of this subsection is to ensure that there is an orderly market for property insurance for residents and businesses of this state.

1. The Legislature finds that private insurers are unwilling or unable to provide affordable property insurance coverage in this state to the extent sought and needed. The absence of affordable property insurance threatens the public health, safety, and welfare and likewise threatens the economic health of the state. The state therefore has a compelling public interest and a public purpose to assist in assuring that property in this ~~the~~ state is insured and that it is insured at affordable rates so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting to the public health, safety, and welfare, to the economy of the state, and to the revenues of the state and local governments which are needed to provide for the public welfare. It is necessary, therefore, to provide affordable property



insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends, therefore, that affordable property insurance be provided and that it continue to be provided, as long as necessary, through Citizens Property Insurance Corporation, a government entity that is an integral part of the state, and that is not a private insurance company. To that end, the corporation shall strive to increase the availability of affordable property insurance in this state, while achieving efficiencies and economies, and while providing service to policyholders, applicants, and agents which is no less than the quality generally provided in the voluntary market, for the achievement of the foregoing public purposes. Because it is essential for this government entity to have the maximum financial resources to pay claims following a catastrophic hurricane, it is the intent of the Legislature that the corporation continue to be an integral part of the state and that the income of the corporation be exempt from federal income taxation and that interest on the debt obligations issued by the corporation be exempt from federal income taxation.

2. The Residential Property and Casualty Joint Underwriting Association originally created by this statute shall be known as the Citizens Property Insurance Corporation. The corporation shall provide insurance for residential and commercial property, for applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market. The corporation shall operate pursuant to a plan of operation approved by order of the Financial Services Commission. The plan is subject to continuous review by the commission. The



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commission may, by order, withdraw approval of all or part of a plan if the commission determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner, mobile home owner, dwelling, tenant, condominium unit owner, and similar policies; and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment building, and similar policies.

3. With respect to coverage for personal lines residential structures, and÷

~~a. Effective January 1, 2014, a structure that has a dwelling replacement cost of $1 million or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $1 million or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2013, may continue to be covered by the corporation until the end of the policy term. The office shall approve the method used by the corporation for valuing the dwelling replacement cost for the purposes of this subparagraph. If a policyholder is insured by the corporation before being determined to be ineligible pursuant to this subparagraph and such policyholder files a lawsuit challenging the determination, the policyholder may remain insured by the corporation until the conclusion of the litigation.~~

~~b. Effective January 1, 2015, a structure that has a dwelling replacement cost of $900,000 or more, or a single~~



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~~condominium unit that has a combined dwelling and contents replacement cost of $900,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2014, may continue to be covered by the corporation only until the end of the policy term.~~

~~c. Effective January 1, 2016, a structure that has a dwelling replacement cost of $800,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $800,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2015, may continue to be covered by the corporation until the end of the policy term.~~

~~d.~~ effective January 1, 2017, a structure that has a dwelling replacement cost of $700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, is not eligible for coverage by the corporation. The corporation must use a method for valuing the dwelling replacement cost which is approved by the office ~~Such dwellings insured by the corporation on December 31, 2016, may continue to be covered by the corporation until the end of the policy term~~. ~~The requirements of sub-subparagraphs b.-d. do not apply~~ However, in counties where the office determines there is not a reasonable degree of competition,~~. In such counties~~ a ~~personal lines residential~~ structure that has a dwelling replacement cost of less than $1 million, or a single condominium unit that has a combined dwelling and contents replacement cost of less than $1 million, is eligible for coverage by the corporation.

4. It is the intent of the Legislature that policyholders,



applicants, and agents of the corporation receive service and treatment of the highest possible level but never less than that generally provided in the voluntary market. It is also intended that the corporation be held to service standards no less than those applied to insurers in the voluntary market by the office with respect to responsiveness, timeliness, customer courtesy, and overall dealings with policyholders, applicants, or agents of the corporation.

5.a. Effective January 1, 2009, a personal lines residential structure that is located in the "wind-borne debris region," as defined in s. 1609.2, International Building Code (2006), and that has an insured value on the structure of $750,000 or more is not eligible for coverage by the corporation unless the structure has opening protections as required under the Florida Building Code for a newly constructed residential structure in that area. A residential structure is deemed to comply with this sub-subparagraph if it has shutters or opening protections on all openings and if such opening protections complied with the Florida Building Code at the time they were installed.

b. Any major structure, as defined in s. 161.54(6)(a), that is newly constructed, or rebuilt, repaired, restored, or remodeled to increase the total square footage of finished area by more than 25 percent, pursuant to a permit applied for after July 1, 2015, is not eligible for coverage by the corporation if the structure is seaward of the coastal construction control line established pursuant to s. 161.053 or is within the Coastal Barrier Resources System as designated by 16 U.S.C. ss. 3501-3510.



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6. With respect to wind-only coverage for commercial lines residential condominiums, effective July 1, 2014, a condominium shall be deemed ineligible for coverage if 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days.

(b)1. All insurers authorized to write one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable insurers; however, insureds who procure one or more subject lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An insurer's assessment liability begins on the first day of the calendar year following the year in which the insurer was issued a certificate of authority to transact insurance for subject lines of business in this state and terminates 1 year after the end of the first calendar year during which the insurer no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

2.a. All revenues, assets, liabilities, losses, and expenses of the corporation shall be divided into three separate accounts as follows:

(I) A personal lines account for personal residential policies issued by the corporation which provides comprehensive, multiperil coverage on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting



Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas;

(II) A commercial lines account for commercial residential and commercial nonresidential policies issued by the corporation which provides coverage for basic property perils on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas; and

(III) A coastal account for personal residential policies and commercial residential and commercial nonresidential property policies issued by the corporation which provides coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002. The corporation may offer policies that provide multiperil coverage and shall offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage in the coastal account. Effective July 1, 2014, the corporation shall cease offering new commercial residential policies providing multiperil coverage and shall instead continue to offer commercial residential wind-only policies, and may offer commercial residential policies excluding wind. The corporation may, however, continue to renew a commercial residential multiperil policy on a building that is insured by the corporation on June 30, 2014, under a multiperil policy. In issuing multiperil coverage, the corporation may use



its approved policy forms and rates for the personal lines account. An applicant or insured who is eligible to purchase a multiperil policy from the corporation may purchase a multiperil policy from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides coverage only for the peril of wind from the corporation. An applicant or insured who is eligible for a corporation policy that provides coverage only for the peril of wind may elect to purchase or retain such policy and also purchase or retain coverage excluding wind from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides multiperil coverage from the corporation. It is the goal of the Legislature that there be an overall average savings of 10 percent or more for a policyholder who currently has a wind-only policy with the corporation, and an ex-wind policy with a voluntary insurer or the corporation, and who obtains a multiperil policy from the corporation. It is the intent of the Legislature that the offer of multiperil coverage in the coastal account be made and implemented in a manner that does not adversely affect the tax-exempt status of the corporation or creditworthiness of or security for currently outstanding financing obligations or credit facilities of the coastal account, the personal lines account, or the commercial lines account. The coastal account must also include quota share primary insurance under subparagraph (c)2. The area eligible for coverage under the coastal account also includes the area within Port Canaveral, which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and



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bordered on the north by Federal Government property.

b. The three separate accounts must be maintained as long as financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are outstanding, in accordance with the terms of the corresponding financing documents. If the financing obligations are no longer outstanding, the corporation shall ~~may~~ use a single account for all revenues, assets, liabilities, losses, and expenses of the corporation. Consistent with this subparagraph and prudent investment policies that minimize the cost of carrying debt, the board shall exercise its best efforts to retire existing debt or obtain the approval of necessary parties to amend the terms of existing debt, so as to structure the most efficient plan for consolidating the three separate accounts into a single account.

c. Creditors of the Residential Property and Casualty Joint Underwriting Association and the accounts specified in sub-sub-subparagraphs a.(I) and (II) may have a claim against, and recourse to, those accounts and no claim against, or recourse to, the account referred to in sub-sub-subparagraph a.(III). Creditors of the Florida Windstorm Underwriting Association have a claim against, and recourse to, the account referred to in sub-sub-subparagraph a.(III) and no claim against, or recourse to, the accounts referred to in sub-sub-subparagraphs a.(I) and (II).

d. Revenues, assets, liabilities, losses, and expenses not attributable to particular accounts shall be prorated among the accounts.

e. The Legislature finds that the revenues of the



corporation are revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds under this subsection.

f. The income of the corporation may not inure to the benefit of any private person.

3. With respect to a deficit in an account:

a. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph i., if the remaining projected deficit incurred in the coastal account in a particular calendar year:

(I) Is not greater than 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the entire deficit shall be recovered through regular assessments of assessable insurers under paragraph (q) and assessable insureds.

(II) Exceeds 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the corporation shall levy regular assessments on assessable insurers under paragraph (q) and on assessable insureds in an amount equal to the greater of 2 percent of the projected deficit or 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year. Any remaining projected deficit shall be recovered through emergency assessments under sub-subparagraph d.

b. Each assessable insurer’s share of the amount being assessed under sub-subparagraph a. must be in the proportion that the assessable insurer’s direct written premium for the subject lines of business for the year preceding the assessment



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bears to the aggregate statewide direct written premium for the subject lines of business for that year. The assessment percentage applicable to each assessable insured is the ratio of the amount being assessed under sub-subparagraph a. to the aggregate statewide direct written premium for the subject lines of business for the prior year. Assessments levied by the corporation on assessable insurers under sub-subparagraph a. must be paid as required by the corporation's plan of operation and paragraph (q). Assessments levied by the corporation on assessable insureds under sub-subparagraph a. shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932, and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. Upon receipt of regular assessments from surplus lines agents, the Florida Surplus Lines Service Office shall transfer the assessments directly to the corporation as determined by the corporation.

c. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph i., the remaining projected deficits in the personal lines account and in the commercial lines account in a particular calendar year shall be recovered through emergency assessments under sub-subparagraph d.

d. Upon a determination by the board of governors that a projected deficit in an account exceeds the amount that is expected to be recovered through regular assessments under sub-subparagraph a., plus the amount that is expected to be recovered through surcharges under sub-subparagraph i., the board, after verification by the office, shall levy emergency



assessments for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance policies. The amount collected in a particular year must be a uniform percentage of that year's direct written premium for subject lines of business and all accounts of the corporation, excluding National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. The office shall notify assessable insurers and the Florida Surplus Lines Service Office of the date on which assessable insurers shall begin to collect and assessable insureds shall begin to pay such assessment. The date must be at least 90 days after the date the corporation levies emergency assessments pursuant to this sub-subparagraph. Notwithstanding any other provision of law, the corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. The emergency assessments collected shall be transferred directly to the corporation on a



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periodic basis as determined by the corporation and held by the corporation solely in the applicable account. The aggregate amount of emergency assessments levied for an account in any calendar year may be less than but may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.

e. The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (q), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection, or to retire any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes regular assessments under sub-subparagraph a. or subparagraph (q)1. and emergency assessments under sub-subparagraph d. Emergency assessments collected under sub-subparagraph d. are not part of an insurer's



rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or indebtedness.

f. As used in this subsection for purposes of any deficit incurred on or after January 25, 2007, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds for all property and casualty lines of business in this state, but not including workers' compensation or medical malpractice. As used in this sub-subparagraph, the term "property and casualty lines of business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers under s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program or the Federal Crop Insurance Program. For purposes of this sub-subparagraph, the term "workers' compensation" includes both workers' compensation insurance and excess workers' compensation insurance.

g. The Florida Surplus Lines Service Office shall determine annually the aggregate statewide written premium in subject lines of business procured by assessable insureds and report that information to the corporation in a form and at a time the



corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.

h. The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for regular assessments and emergency assessments levied under this subparagraph on assessable insureds and assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.

i. Upon determination by the board of governors that an account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.

(I) The surcharge shall be levied as a uniform percentage of the premium for the policy of up to 15 percent of such premium, which funds shall be used to offset the deficit.

(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.

(III) The corporation may not levy any regular assessments under paragraph (q) pursuant to sub-subparagraph a. or sub-subparagraph b. with respect to a particular year's deficit until the corporation has first levied the full amount of the surcharge authorized by this sub-subparagraph.

(IV) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure



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to pay the surcharge shall be treated as failure to pay premium.

j. If the amount of any assessments or surcharges collected from corporation policyholders, assessable insurers or their policyholders, or assessable insureds exceeds the amount of the deficits, such excess amounts shall be remitted to and retained by the corporation in a reserve to be used by the corporation, as determined by the board of governors and approved by the office, to pay claims or reduce any past, present, or future plan-year deficits or to reduce outstanding debt.

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.


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d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

g. Effective January 1, 2013, the corporation shall offer a basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane



coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level



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may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.



h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the



financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of the state, one of whom is appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and be deemed to be within


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the scope of the exemption provided in s. 112.313(7)(b) at the time of appointment or reappointment. The Chief Financial Officer shall designate one of the appointees as chair. On or after July 1, 2022, an appointee designated as chair must have demonstrated expertise in insurance or must have at least 1 year of experience serving on the board of governors. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. The executive director must, at the time of the appointment, have the experience, character, and qualifications required under s. 624.404(3) to serve as the chief executive officer of an insurer. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board. As used in this sub-subparagraph, the term "demonstrated expertise in insurance" means at least 10 years'



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678 experience:
679 (I) In property and casualty insurance as a full-time
680 employee, officer, or owner of a licensed insurance agency or an
681 insurer authorized to transact property insurance in this state;
682 or
683 (II) As an insurance regulator or as an executive or
684 officer of an insurance trade association.
685 b. The board shall create a Market Accountability Advisory
686 Committee to assist the corporation in developing awareness of
687 its rates and its customer and agent service levels in
688 relationship to the voluntary market insurers writing similar
689 coverage.
690 (I) The members of the advisory committee consist of the
691 following 11 persons, one of whom must be elected chair by the
692 members of the committee: four representatives, one appointed by
693 the Florida Association of Insurance Agents, one by the Florida
694 Association of Insurance and Financial Advisors, one by the
695 Professional Insurance Agents of Florida, and one by the Latin
696 American Association of Insurance Agencies; three
697 representatives appointed by the insurers with the three highest
698 voluntary market share of residential property insurance
699 business in the state; one representative from the Office of
700 Insurance Regulation; one consumer appointed by the board who is
701 insured by the corporation at the time of appointment to the
702 committee; one representative appointed by the Florida
703 Association of Realtors; and one representative appointed by the
704 Florida Bankers Association. All members shall be appointed to
705 3-year terms and may serve for consecutive terms.
706 (II) The committee shall report to the corporation at each



board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, ~~if the offer is equal to or less than the corporation's renewal premium for comparable coverage,~~ the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from the corporation. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage



regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept


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appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 20 ~~15~~ percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, ~~if the offer~~



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~~is equal to or less than the corporation's renewal premium for comparable coverage,~~ the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.



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If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on



the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy ~~that is~~ offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income for



an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must be available to defray deficits in that account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 do not apply.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors. If catastrophe reinsurance is not available at reasonable rates, the corporation need not purchase it, but the corporation shall include the costs of reinsurance to cover its projected 100-year probable maximum loss in its rate calculations even if it does not purchase catastrophe



reinsurance.

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. Must provide that, with respect to the coastal account,



any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who throughout such appointments also hold an appointment as defined in s. 626.015 by an insurer who is authorized to write and is actually writing or renewing personal lines residential property coverage, commercial residential property coverage, or commercial



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nonresidential property coverage within the state.

15. Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

a. Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as those of the primary dwelling;

b. Carports that are aluminum or carports that are not covered by the same or substantially the same materials as those of the primary dwelling; and

c. Patios that have a roof covering ~~that is~~ constructed of materials that are not the same or substantially the same materials as those of the primary dwelling.

The corporation shall make available a policy for mobile homes or manufactured homes for a minimum insured value of at least $3,000.

18. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

19. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.


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20. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

21. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgment signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN


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PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

a. The corporation shall maintain, in electronic format or otherwise, a copy of the applicant’s signed acknowledgment and provide a copy of the statement to the policyholder as part of the first renewal after the effective date of this subparagraph.

b. The signed acknowledgment form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

(n)1. Rates for coverage provided by the corporation must be actuarially sound and subject to s. 627.062, except as otherwise provided in this paragraph. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final



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order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes.

5. Notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed the following for any single <u>personal lines residential</u> policy issued by the corporation <u>that covers an insured's primary residence, and any single commercial lines residential policy issued by the corporation</u>, excluding coverage changes and surcharges:

a. Eleven percent for 2022.

b. Twelve percent for 2023.


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c. Thirteen percent for 2024.

d. Fourteen percent for 2025.

e. Fifteen percent for 2026 and all subsequent years.

6. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

7. The corporation's implementation of rates as prescribed in subparagraph 5. shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing for each commercial and personal line of business the corporation writes.

8. Any new personal lines residential policy written by the corporation with an effective date on or after January 1, 2023, which covers a risk for which the immediately preceding policy covering such risk was written by an unsound insurer shall be charged a premium for coverage that is the higher of the last premium amount charged by the unsound insurer or the premium charged by the corporation applicable to the policy. Premiums established by the unsound insurer shall remain unchanged, except for adjustments for coverage changes at renewal, until such time as the corporation's premium for that policy exceeds this amount and thus the policy becomes subject to the corporation's annually approved rate.

9. As used in this paragraph, the term:

a. "Primary residence" means the dwelling that the insured has represented as their permanent home on the insurance application or otherwise to the corporation.



b. "Unsound insurer" means an insurer determined by the Office of Insurance Regulation to be in unsound condition as defined in s. 624.80(2) or an insurer placed in receivership under chapter 631.

(q)1. The corporation shall certify to the office its needs for annual assessments as to a particular calendar year, and for any interim assessments that it deems to be necessary to sustain operations as to a particular year pending the receipt of annual assessments. Upon verification, the office shall approve such certification, and the corporation shall levy such annual or interim assessments. Such assessments shall be prorated as provided in paragraph (b). The corporation shall take all reasonable and prudent steps necessary to collect the amount of assessments due from each assessable insurer, including, if prudent, filing suit to collect the assessments, and the office may provide such assistance to the corporation it deems appropriate. If the corporation is unable to collect an assessment from any assessable insurer, the uncollected assessments shall be levied as an additional assessment against the assessable insurers and any assessable insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action against such nonpaying assessable insurer. Assessments shall be included as an appropriate factor in the making of rates. The failure of a surplus lines agent to collect and remit any regular or emergency assessment levied by the corporation is considered to be a violation of s. 626.936 and subjects the surplus lines agent to the penalties provided in that section.

2. The governing body of any unit of local government, any

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residents of which are insured by the corporation, may issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the corporation, for the purpose of defraying deficits of the corporation. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the corporation, may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the territorial jurisdiction of the local government. Revenue bonds under this subparagraph may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and declaring it an essential public purpose to permit certain municipalities or counties to issue such bonds as will permit relief to claimants and policyholders of the corporation. Any such unit of local government may enter into such contracts with the corporation and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this subparagraph shall be payable from and secured by moneys received by the corporation from emergency assessments under sub-subparagraph (b)3.d., and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government <u>may</u> ~~shall~~



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not be pledged for the payment of such bonds.

3.a. The corporation shall adopt one or more programs subject to approval by the office for the reduction of both new and renewal writings in the corporation. Beginning January 1, 2008, any program the corporation adopts for the payment of bonuses to an insurer for each risk the insurer removes from the corporation shall comply with s. 627.3511(2) and may not exceed the amount referenced in s. 627.3511(2) for each risk removed. The corporation may consider any prudent and not unfairly discriminatory approach to reducing corporation writings, and may adopt a credit against assessment liability or other liability that provides an incentive for insurers to take risks out of the corporation and to keep risks out of the corporation by maintaining or increasing voluntary writings in counties or areas in which corporation risks are highly concentrated and a program to provide a formula under which an insurer voluntarily taking risks out of the corporation by maintaining or increasing voluntary writings will be relieved wholly or partially from assessments under sub-subparagraph (b)3.a. However, any "take-out bonus" or payment to an insurer must be conditioned on the property being insured for at least 5 years by the insurer, unless canceled or nonrenewed by the policyholder. If the policy is canceled or nonrenewed by the policyholder before the end of the 5-year period, the amount of the take-out bonus must be prorated for the time period the policy was insured. When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on such policy, and the insurer shall either:


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(I) Pay to the producing agent of record of the policy, for the first year, an amount which is the greater of the insurer's usual and customary commission for the type of policy written or a policy fee equal to the usual and customary commission of the corporation; or

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the insurer's usual and customary commission for the type of policy written. If the producing agent is unwilling or unable to accept appointment by the new insurer, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).

b. Any credit or exemption from regular assessments adopted under this subparagraph shall last no longer than the 3 years following the cancellation or expiration of the policy by the corporation. With the approval of the office, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies so removed.

c. There shall be no credit, limitation, exemption, or deferment from emergency assessments to be collected from policyholders pursuant to sub-subparagraph (b)3.d.

d. Notwithstanding any other law, for purposes of a depopulation, take-out, or keep-out program adopted by the corporation, including an initial or renewal offer of coverage made to a policyholder removed from the corporation pursuant to such program, an eligible surplus lines insurer may participate



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in the program in the same manner and on the same terms as an authorized insurer, except as provided under this sub-subparagraph.

(I) The policy count of the corporation must be more than 700,000 within the 30 days before the time a take-out offer is made by a surplus lines insurer.

(II) To qualify for participation, the surplus lines insurer must first obtain approval from the office for its depopulation, take-out, or keep-out plan and then comply with all of the corporation's requirements for the plan applicable to admitted insurers and with all statutory provisions applicable to the removal of policies from the corporation.

(III) In considering a surplus lines insurer's request for approval for its plan, the office shall determine whether the surplus lines insurer meets the following requirements:

(A) Maintains a surplus of $50 million on a company or pooled basis;

(B) Has a superior, excellent, exceptional, or equally comparable financial strength rating by a rating agency acceptable to the office;

(C) Maintains reserves, surplus, reinsurance, and reinsurance equivalents sufficient to cover the insurer's 100-year probable maximum hurricane loss at least twice in a single hurricane season and submits such reinsurance to the office to review for purposes of the take-out;

(D) Provides prominent notice to the policyholder before the assumption of the policy that surplus lines policies are not provided coverage by the Florida Insurance Guaranty Association and provides an outline of any substantial differences in



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coverage between the existing policy and the policy being offered to the insured; and

(E) Provides policy coverage similar to that provided by the corporation.

(IV) To obtain approval for a plan, the surplus lines insurer must file the following with the office:

(A) Information requested by the office to demonstrate compliance with s. 624.404(3), including biographical affidavits, fingerprints processed pursuant to s. 624.34, and the results of criminal history records checks for officers and directors of the insurer and its parent or holding company;

(B) A service-of-process consent and agreement form executed by the insurer;

(C) Proof that the insurer has been an eligible or authorized insurer for at least 3 years;

(D) A duly authenticated copy of the insurer's current audited financial statement, in English, which, in the case of statements originally made in the currencies of other countries, expresses all monetary values in United States dollars, at an exchange rate then current and shown in the statement, and including any additional information relative to the insurer as the office may request;

(E) A complete certified copy of the latest official financial statement required by the insurer's domiciliary state, if different from the statement required by sub-sub-sub-subparagraph (D); and

(F) If applicable, a copy of the United States trust account agreement.



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This sub-sub-subparagraph does not subject any surplus lines insurer to requirements in addition to part VIII of chapter 626. Surplus lines brokers making an offer of coverage under this sub-subparagraph are not required to comply with s. 626.916(1)(a), (b), (c), or (e).

(V) Within 10 days after the date of assumption, the surplus lines insurer assuming policies from the corporation shall remit to the Bureau of Collateral Management within the Department of Financial Services a special deposit equal to the unearned premium net of unearned commissions on the assumed block of business. The surplus lines insurer shall submit to the office, along with the special deposit, an accounting of the policies assumed and the amount of unearned premium for such policies and a sworn affidavit attesting to the accuracy of the accounting by an officer of the surplus lines insurer. Thereafter, the surplus lines insurer shall make a filing within 10 days after the end of each calendar quarter attesting to the unearned premium in force for the previous quarter on policies assumed from the corporation and shall submit additional funds with that filing if the special deposit is insufficient to cover the unearned premium on assumed policies, or shall receive a return of funds within 60 days if the special deposit exceeds the amount of unearned premium required for assumed policies. The special deposit is an asset of the surplus lines insurer which is held by the department for the benefit of state policyholders of the surplus lines insurer in the event of the insolvency of the surplus lines insurer. If an order of liquidation is entered in any state against the surplus lines insurer, the department may use the special deposit for payment



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of unearned premium or policy claims, return all or part of the deposit to the domiciliary receiver, or use the funds in accordance with any action authorized under part I of chapter 631 or in compliance with any order of a court having jurisdiction over the insolvency.

(VI) In advance of a surplus lines insurer assuming a policy, surplus lines brokers representing a surplus lines insurer on a take-out program shall obtain confirmation, in written or e-mail form, from each producing agent stating that the agent is willing to participate in the take-out program with the surplus lines insurer engaging in the take-out program. The take-out program is also subject to s. 627.3517. If a policyholder is selected for removal from the corporation by a surplus lines insurer and an authorized insurer, the corporation must give priority to the offer of coverage from the authorized insurer.

(VII)(A) A risk that has a dwelling replacement cost of $700,000 or more or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more is not eligible for coverage by the corporation if it is offered comparable coverage from a qualified surplus lines insurer at a premium no greater than the premium charged by the corporation.

(B) A risk that has a dwelling replacement cost below $700,000 or a single condominium unit that has a combined dwelling and contents replacement cost below $700,000 remains eligible for coverage by the corporation if it is offered coverage from a qualified surplus lines insurer.

4. The plan shall provide for the deferment, in whole or in


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part, of the assessment of an assessable insurer, other than an emergency assessment collected from policyholders pursuant to sub-subparagraph (b)3.d., if the office finds that payment of the assessment would endanger or impair the solvency of the insurer. In the event an assessment against an assessable insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other assessable insurers in a manner consistent with the basis for assessments set forth in paragraph (b).

5. Effective July 1, 2007, in order to evaluate the costs and benefits of approved take-out plans, if the corporation pays a bonus or other payment to an insurer for an approved take-out plan, it shall maintain a record of the address or such other identifying information on the property or risk removed in order to track if and when the property or risk is later insured by the corporation.

6. Any policy taken out, assumed, or removed from the corporation is, as of the effective date of the take-out, assumption, or removal, direct insurance issued by the insurer and not by the corporation, even if the corporation continues to service the policies. This subparagraph applies to policies of the corporation and not policies taken out, assumed, or removed from any other entity.

7. For a policy taken out, assumed, or removed from the corporation, the insurer may, for a period of no more than 3 years, continue to use any of the corporation’s policy forms or endorsements that apply to the policy taken out, removed, or assumed without obtaining approval from the office for use of such policy form or endorsement.


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(x)1. The following records of the corporation are confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files. Confidential and exempt underwriting file records may also be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

b. Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the corporation



under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information that is exempt includes ~~shall include~~, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits.

g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty that affects the employee's job performance, all records relative to that participation are ~~shall be~~ confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law must ~~shall~~ be redacted.

2. If an authorized insurer, a reinsurance intermediary, an eligible surplus lines insurer, or an entity that has filed an application with the office for licensure as a property and casualty insurer in this state is considering writing or


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assisting in the underwriting of a risk insured by the corporation, relevant information from both the underwriting files and confidential claims files may be released to the insurer, reinsurance intermediary, eligible surplus lines insurer, or entity that has been created to seek authority to write property insurance in this state, provided that the recipient ~~insurer~~ agrees in writing, notarized and under oath, to maintain the confidentiality of such files. If a policy file is transferred to an insurer, that policy file is no longer a public record because it is not held by an agency subject to ~~the provisions of~~ the public records law. Underwriting files and confidential claims files may also be released to staff and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming the risks to which the files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to an entity that has obtained a permit to become an authorized insurer, a reinsurer that may provide reinsurance under s. 624.610, a licensed reinsurance broker, a licensed rating organization, a modeling company, or a licensed general lines insurance agent: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving person must retain the confidentiality of the information


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received and may use the information only for the purposes of developing a take-out plan or a rating plan to be submitted to the office for approval or otherwise analyzing the underwriting of a risk or risks insured by the corporation on behalf of the private insurance market. A licensed general lines insurance agent may not use such information for the direct solicitation of policyholders.

3. A policyholder who has filed suit against the corporation has the right to discover the contents of his or her own claims file to the same extent that discovery of such contents would be available from a private insurer in litigation as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law. Pursuant to subpoena, a third party has the right to discover the contents of an insured’s or applicant’s underwriting or claims file to the same extent that discovery of such contents would be available from a private insurer by subpoena as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law, and subject to any confidentiality protections requested by the corporation and agreed to by the seeking party or ordered by the court. The corporation may release confidential underwriting and claims file contents and information as it deems necessary and appropriate to underwrite or service insurance policies and claims, subject to any confidentiality protections deemed necessary and appropriate by the corporation.

4. Portions of meetings of the corporation are exempt from ~~the provisions of~~ s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of



corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(d)-(f), the court reporter's notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

(ii) The corporation shall revise the programs adopted pursuant to sub-subparagraph (q)3.a. for personal lines residential policies to maximize policyholder options and encourage increased participation by insurers and agents. After January 1, 2017, a policy may not be taken out of the corporation unless the provisions of this paragraph are met.

1. The corporation must publish a periodic schedule of cycles during which an insurer may identify, and notify the corporation of, policies that the insurer is requesting to take out. A request must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.

2. The corporation must maintain and make available to the agent of record a consolidated list of all insurers requesting to take out a policy. The list must include a description of the coverage offered and the estimated premium for each take-out request.



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3. The corporation must provide written notice to the policyholder and the agent of record regarding all insurers requesting to take out the policy, which notice must inform that a take-out offer that is not more than 20 percent greater than the corporation's premium renders the risk ineligible for coverage from ~~and regarding the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with~~ the corporation. The notice must be in a format prescribed by the corporation and include, for each take-out offer:

a. The amount of the estimated premium;

b. A description of the coverage; and

c. A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

Section 4. Section 627.3518, Florida Statutes, is amended to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program. ~~The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.~~

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

(a) "Corporation" means Citizens Property Insurance Corporation.

(b) "Exclusive agent" means any licensed insurance agent that has, by contract, agreed to act exclusively for one company or group of affiliated insurance companies and is disallowed by the provisions of that contract to directly write for any other unaffiliated insurer absent express consent from the company or group of affiliated insurance companies.


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(c) "Independent agent" means any licensed insurance agent not described in paragraph (b).

(d) "Program" means the clearinghouse created under this section.

(2) In order to confirm eligibility with the corporation and to enhance access of new applicants for coverage and existing policyholders of the corporation to offers of coverage from authorized insurers, the corporation shall establish a program for personal residential risks in order to facilitate the diversion of ineligible applicants and existing policyholders from the corporation into the voluntary insurance market. The corporation shall also develop appropriate procedures for facilitating the diversion of ineligible applicants and existing policyholders for commercial residential coverage into the private insurance market ~~and shall report such procedures to the President of the Senate and the Speaker of the House of Representatives by January 1, 2014~~.

(3) The corporation board shall establish the clearinghouse program as an organizational unit within the corporation. The program shall have all the rights and responsibilities in carrying out its duties as a licensed general lines agent, but may not be required to employ or engage a licensed general lines agent or to maintain an insurance agency license to carry out its activities in the solicitation and placement of insurance coverage. In establishing the program, the corporation may:

(a) Require all new applications, and all policies due for renewal, to be submitted for coverage to the program in order to facilitate obtaining an offer of coverage from an authorized insurer before binding or renewing coverage by the corporation.



(b) Employ or otherwise contract with individuals or other entities for appropriate administrative or professional services to effectuate the plan within the corporation in accordance with the applicable purchasing requirements under s. 627.351.

(c) Enter into contracts with any authorized insurer to participate in the program and accept an appointment by such insurer.

(d) Provide funds to operate the program. Insurers and agents participating in the program are not required to pay a fee to offset or partially offset the cost of the program or use the program for renewal of policies initially written through the clearinghouse.

(e) Develop an enhanced application that includes information to assist private insurers in determining whether to make an offer of coverage through the program.

(f) For personal lines residential risks, require, before approving all new applications for coverage by the corporation, that every application be subject to a period of 2 business days when any insurer participating in the program may select the application for coverage. The insurer may issue a binder on any policy selected for coverage for a period of at least 30 days but not more than 60 days.

(4) Any authorized insurer may participate in the program; however, participation is not mandatory for any insurer. Insurers making offers of coverage to new applicants or renewal policyholders through the program:

(a) May not be required to individually appoint any agent whose customer is underwritten and bound through the program. Notwithstanding s. 626.112, insurers are not required to appoint


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any agent on a policy underwritten through the program for as long as that policy remains with the insurer. Insurers may, at their election, appoint any agent whose customer is initially underwritten and bound through the program. In the event an insurer accepts a policy from an agent who is not appointed pursuant to this paragraph, and thereafter elects to accept a policy from such agent, the provisions of s. 626.112 requiring appointment apply to the agent.

(b) Must enter into a limited agency agreement with each agent that is not appointed in accordance with paragraph (a) and whose customer is underwritten and bound through the program.

(c) Must enter into its standard agency agreement with each agent whose customer is underwritten and bound through the program when that agent has been appointed by the insurer pursuant to s. 626.112.

(d) Must comply with s. 627.4133(2).

(e) May participate through their single-designated managing general agent or broker; however, the provisions of paragraph (6)(a) regarding ownership, control, and use of the expirations continue to apply.

(f) Must pay to the producing agent a commission equal to that paid by the corporation or the usual and customary commission paid by the insurer for that line of business, whichever is greater.

(5) Notwithstanding s. 627.3517, any applicant for new coverage from the corporation is not eligible for coverage from the corporation if provided an offer of coverage from an authorized insurer through the program at a premium that is at or below the eligibility threshold established in s.



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627.351(6)(c)5.a. Whenever an offer of coverage for a personal lines risk is received for a policyholder of the corporation at renewal from an authorized insurer through the program, if the offer is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. ~~equal to or less than the corporation's renewal premium for comparable coverage~~, the risk is not eligible for coverage with the corporation. In the event an offer of coverage for a new applicant is received from an authorized insurer through the program, and the premium offered exceeds the eligibility threshold contained in s. 627.351(6)(c)5.a., the applicant or insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. In the event an offer of coverage for a personal lines risk is received from an authorized insurer at renewal through the program, and the premium offered is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. ~~more than the corporation's renewal premium for comparable coverage~~, the insured is not eligible to ~~may elect to accept such coverage, or may elect to accept or~~ continue coverage with the corporation. Section 627.351(6)(c)5.a.(I) does not apply to an offer of coverage from an authorized insurer obtained through the program. An applicant for coverage from the corporation who was declared ineligible for coverage at renewal by the corporation in the previous 36 months due to an offer of coverage pursuant to this subsection shall be considered a renewal under this section if the corporation determines that the authorized insurer making the offer of coverage pursuant to this subsection continues to insure the applicant and increased the rate on the policy in


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excess of the increase allowed for the corporation under s. 627.351(6)(n)5.

(6) Independent insurance agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Are granted and must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Such ownership is granted for as long as the insured remains with the agency or until sold or surrendered in writing by the agent. Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) May accept an appointment from any insurer participating in the program.

(d) May enter into either a standard or limited agency agreement with the insurer, at the insurer’s option.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their independent agent is unwilling or



unable to enter into a standard or limited agency agreement with an insurer participating in the program.

(7) Exclusive agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) Must only facilitate the placement of an offer of coverage from an insurer whose limited servicing agreement is approved by that exclusive agent’s exclusive insurer.

(d) May enter into a limited servicing agreement with the insurer making an offer of coverage, and only after the exclusive agent’s insurer has approved the limited servicing agreement terms. The exclusive agent’s insurer must approve a limited service agreement for the program for any insurer for which it has approved a service agreement for other purposes.


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Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their exclusive agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer making an offer of coverage to that applicant.

(8) Submission of an application for coverage by the corporation to the program does not constitute the binding of coverage by the corporation, and failure of the program to obtain an offer of coverage by an insurer may not be considered acceptance of coverage of the risk by the corporation.

(9) The 45-day notice of nonrenewal requirement set forth in s. 627.4133(2)(b)5. applies when a policy is nonrenewed by the corporation because the risk has received an offer of coverage pursuant to this section which renders the risk ineligible for coverage by the corporation.

(10) The program may not include commercial nonresidential policies.

(11) Proprietary business information provided to the corporation's clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(a) As used in this subsection, the term "proprietary business information" means information, regardless of form or characteristics, which is owned or controlled by an insurer and:

1. Is identified by the insurer as proprietary business information and is intended to be and is treated by the insurer as private in that the disclosure of the information would cause harm to the insurer, an individual, or the company's business operations and has not been disclosed unless disclosed pursuant


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to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;

2. Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to the clearinghouse; and

3. Includes:

a. Trade secrets, as defined in s. 688.002.

b. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Proprietary business information may be found in underwriting criteria or instructions which are used to identify and select risks through the program for an offer of coverage and are shared with the clearinghouse to facilitate the shopping of risks with the insurer.

(b) The clearinghouse may disclose confidential and exempt proprietary business information:

1. If the insurer to which it pertains gives prior written consent;

2. Pursuant to a court order; or

3. To another state agency in this or another state or to a federal agency if the recipient agrees in writing to maintain the confidential and exempt status of the document, material, or other information and has verified in writing its legal authority to maintain such confidentiality.

Section 5. Subsections (2) and (4) of section 627.701, Florida Statutes, are amended, and subsection (10) is added to



that section, to read:

627.701 Liability of insureds; coinsurance; deductibles.—

(2) Unless the office determines that the deductible provision is clear and unambiguous, a property insurer may not issue an insurance policy or contract covering real property in this state which contains a deductible provision that:

(a) Applies solely to hurricane losses.

(b) States the deductible as a percentage rather than as a specific amount of money.

(c) Applies a roof deductible as provided in subsection (10).

(4)(a) Any policy that contains a separate hurricane deductible must on its face include in boldfaced type no smaller than 18 points the following statement: "THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR HURRICANE LOSSES, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU." A policy containing a coinsurance provision applicable to hurricane losses must on its face include in boldfaced type no smaller than 18 points the following statement: "THIS POLICY CONTAINS A CO-PAY PROVISION THAT MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU."

(b) For any personal lines residential property insurance policy containing a separate hurricane deductible, the insurer shall compute and prominently display the actual dollar value of the hurricane deductible on the declarations page of the policy at issuance and, for renewal, on the renewal declarations page of the policy or on the premium renewal notice.

(c) For any personal lines residential property insurance policy containing an inflation guard rider, the insurer shall compute and prominently display the actual dollar value of the



hurricane deductible on the declarations page of the policy at issuance and, for renewal, on the renewal declarations page of the policy or on the premium renewal notice. In addition, for any personal lines residential property insurance policy containing an inflation guard rider, the insurer shall notify the policyholder of the possibility that the hurricane deductible may be higher than indicated when loss occurs due to application of the inflation guard rider. Such notification shall be made on the declarations page of the policy at issuance and, for renewal, on the renewal declarations page of the policy or on the premium renewal notice.

(d)1. A personal lines residential property insurance policy covering a risk valued at less than $500,000 may not have a hurricane deductible in excess of 10 percent of the policy dwelling limits, unless the following conditions are met:

a. The policyholder must personally write and provide to the insurer the following statement in his or her own handwriting and sign his or her name, which must also be signed by every other named insured on the policy, and dated: “I do not want the insurance on my home to pay for the first (specify dollar value) of damage from hurricanes. I will pay those costs. My insurance will not.”

b. If the structure insured by the policy is subject to a mortgage or lien, the policyholder must provide the insurer with a written statement from the mortgageholder or lienholder indicating that the mortgageholder or lienholder approves the policyholder electing to have the specified deductible.

2. A deductible subject to the requirements of this paragraph applies for the term of the policy and for each



renewal thereafter. Changes to the deductible percentage may be implemented only as of the date of renewal.

3. An insurer shall keep the original copy of the signed statement required by this paragraph, electronically or otherwise, and provide a copy to the policyholder providing the signed statement. A signed statement meeting the requirements of this paragraph creates a presumption that there was an informed, knowing election of coverage.

4. The commission shall adopt rules providing appropriate alternative methods for providing the statements required by this section for policyholders who have a handicapping or disabling condition that prevents them from providing a handwritten statement.

(e)1. Any personal lines residential property insurance policy that contains a separate roof deductible must on its face include in boldfaced type no smaller than 18 points the following statement: "THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR ROOF LOSSES WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU."

2. For any personal lines residential property insurance policy containing a separate roof deductible, the insurer shall compute and prominently display the actual dollar value of the roof deductible on the declarations page of the policy at issuance and, for renewal, on the renewal declarations page of the policy or on the premium renewal notice.

(10) Notwithstanding any other provision of this section and any other provision of law, a property insurer may require a separate roof deductible as a condition of eligibility or renewal of a residential property insurance policy if all of the



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following conditions are met:

(a) The roof deductible does not exceed 2 percent of the policy dwelling limits.

(b) The premium for such coverage includes an actuarially sound premium discount or credit for the impact of the roof deductible.

(c) If a roof deductible is added to the policy at renewal, the insurer provides a notice of change in policy terms pursuant to s. 627.43141.

(d) The roof deductible does not apply to:

1. A total loss to a primary structure in accordance with the valued policy law under s. 627.702 which is caused by a covered peril.

2. A roof loss that is caused by a hurricane as defined by s. 627.4025(2).

3. A roof loss that can be repaired without replacement of the roof.

(e) If a roof deductible is applied, no other policy deductible may be applied to the loss. If, however, a roof deductible is not applied, the all-other-perils deductible or the hurricane deductible may be applied.

Section 6. Paragraph (a) of subsection (3) of section 627.7011, Florida Statutes, is amended to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.—

(3) In the event of a loss for which a dwelling or personal property is insured on the basis of replacement costs:

(a) For a dwelling, the insurer must initially pay at least the actual cash value of the insured loss, less any applicable



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deductible. The insurer shall pay any remaining amounts necessary to perform such repairs as work is performed and expenses are incurred. However, if a roof deductible under s. 627.701(10) is applied to the insured loss, the insurer may limit the claim payment as to the roof to the actual cash value of the loss to the roof until the insurer receives reasonable proof of payment by the policyholder of the roof deductible. Reasonable proof of payment includes a canceled check, money order receipt, credit card statement, or copy of an executed installment plan contract or other financing arrangement that requires full payment of the deductible over time. If a total loss of a dwelling occurs, the insurer shall pay the replacement cost coverage without reservation or holdback of any depreciation in value, pursuant to s. 627.702.

Section 7. Paragraph (b) of subsection (8) of section 627.70152, Florida Statutes, is amended to read:

627.70152 Suits arising under a property insurance policy.—

(8) ATTORNEY FEES.—

(b) In a suit arising under a residential or commercial property insurance policy not brought by an assignee, if a court dismisses a claimant’s suit pursuant to subsection (5), the court may not award to the claimant any incurred attorney fees for services rendered before the dismissal of the suit. When a claimant’s suit is dismissed pursuant to subsection (5), the defendant may be awarded reasonable attorney fees for the costs and expenses associated with securing the dismissal.

Section 8. For the purpose of incorporating the amendments made by this act to section 627.351, Florida Statutes, in a reference thereto, subsection (10) of section 624.424, Florida


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Statutes, is reenacted to read:

624.424 Annual statement and other information.—

(10) Each insurer or insurer group doing business in this state shall file on a quarterly basis in conjunction with financial reports required by paragraph (1)(a) a supplemental report on an individual and group basis on a form prescribed by the commission with information on personal lines and commercial lines residential property insurance policies in this state. The supplemental report shall include separate information for personal lines property policies and for commercial lines property policies and totals for each item specified, including premiums written for each of the property lines of business as described in ss. 215.555(2)(c) and 627.351(6)(a). The report shall include the following information for each county on a monthly basis:

(a) Total number of policies in force at the end of each month.

(b) Total number of policies canceled.

(c) Total number of policies nonrenewed.

(d) Number of policies canceled due to hurricane risk.

(e) Number of policies nonrenewed due to hurricane risk.

(f) Number of new policies written.

(g) Total dollar value of structure exposure under policies that include wind coverage.

(h) Number of policies that exclude wind coverage.

Section 9. For the purpose of incorporating the amendments made by this act to section 627.351, Florida Statutes, in a reference thereto, section 627.3517, Florida Statutes, is reenacted to read:



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627.3517 Consumer choice.—No provision of s. 627.351, s. 627.3511, or s. 627.3515 shall be construed to impair the right of any insurance risk apportionment plan policyholder, upon receipt of any keepout or take-out offer, to retain his or her current agent, so long as that agent is duly licensed and appointed by the insurance risk apportionment plan or otherwise authorized to place business with the insurance risk apportionment plan. This right shall not be canceled, suspended, impeded, abridged, or otherwise compromised by any rule, plan of operation, or depopulation plan, whether through keepout, take-out, midterm assumption, or any other means, of any insurance risk apportionment plan or depopulation plan, including, but not limited to, those described in s. 627.351, s. 627.3511, or s. 627.3515. The commission shall adopt any rules necessary to cause any insurance risk apportionment plan or market assistance plan under such sections to demonstrate that the operations of the plan do not interfere with, promote, or allow interference with the rights created under this section. If the policyholder’s current agent is unable or unwilling to be appointed with the insurer making the take-out or keepout offer, the policyholder shall not be disqualified from participation in the appropriate insurance risk apportionment plan because of an offer of coverage in the voluntary market. An offer of full property insurance coverage by the insurer currently insuring either the ex-wind or wind-only coverage on the policy to which the offer applies shall not be considered a take-out or keepout offer. Any rule, plan of operation, or plan of depopulation, through keepout, take-out, midterm assumption, or any other means, of any property insurance risk apportionment plan under

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s. 627.351(2) or (6) is subject to ss. 627.351(2)(b) and (6)(c) and 627.3511(4).

Section 10. For the purpose of incorporating the amendments made by this act to section 627.351, Florida Statutes, in a reference thereto, subsection (1) of section 627.712, Florida Statutes, is reenacted to read:

627.712 Residential windstorm coverage required; availability of exclusions for windstorm or contents.—

(1) An insurer issuing a residential property insurance policy must provide windstorm coverage. Except as provided in paragraph (2)(c), this section does not apply to risks that are eligible for wind-only coverage from Citizens Property Insurance Corporation under s. 627.351(6), and risks that are not eligible for coverage from Citizens Property Insurance Corporation under s. 627.351(6)(a)3. or 5. A risk ineligible for coverage by the corporation under s. 627.351(6)(a)3. or 5. is exempt from this section only if the risk is located within the boundaries of the coastal account of the corporation.

Section 11. 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 property insurance; amending s. 489.147, F.S.; revising the definition of the term "prohibited advertisement"; amending s. 627.021, F.S.; revising applicability; amending s. 627.351, F.S.;



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deleting obsolete provisions related to eligibility thresholds for personal lines residential coverage with the Citizens Property Insurance Corporation; requiring the corporation to use a method for valuing dwelling replacement costs which is approved by the Office of Insurance Regulation; requiring, rather than authorizing, the corporation to use a single account under certain circumstances; specifying qualifications requirements for certain members of the board of governors for the corporation; defining the term "demonstrated expertise in insurance"; revising conditions for eligibility for coverage with the corporation; providing for a required limited annual rate increase for specified polices; requiring that certain new policies written by the corporation be charged a specified premium until certain conditions are met; defining the terms "primary residence" and "unsound insurer"; providing that eligible surplus lines insurers may participate, in the same manner and on the same terms as an authorized insurer, in depopulation, take-out, or keep-out programs relating to policies removed from Citizens Property Insurance Corporation; providing certain exceptions, conditions, and requirements relating to such participation by a surplus lines insurer in the corporation's depopulation, take-out, or keep-out programs; providing thresholds for eligibility for coverage by the corporation for risks that are offered coverage from qualified surplus lines insurers; authorizing



information from underwriting files and confidential claims files to be released under certain circumstances by the corporation to specified entities that consider writing or underwriting risks insured by the corporation; specifying that only the corporation's transfer of a policy file to an insurer, as opposed to the transfer of any file, changes the file's public record status; revising the contents of a specified notice provided by the corporation; making technical changes; amending s. 627.3518, F.S.; deleting an obsolete provision related to implementing the clearinghouse program by a specified date; deleting an obsolete reporting requirement; conforming provisions to changes made by the act; amending s. 627.701, F.S.; revising a prohibition against the issuance of insurance policies containing certain deductible provisions; requiring personal lines residential property insurance policies containing separate roof deductibles to include specified information; authorizing property insurers to require separate roof deductibles if certain conditions are met; amending s. 627.7011, F.S.; authorizing insurers to limit roof claim payments to the actual cash value under certain circumstances; amending s. 627.70152, F.S.; authorizing the award of reasonable attorney fees to defendants under certain circumstances; reenacting ss. 624.424(10), 627.3517, and 627.712(1), F.S., relating to annual insurer statements, consumer choice, and required residential windstorm coverage,


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respectively, to incorporate the amendments made to s. 627.351, F.S., in references thereto; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/02/2022	.	
	.	
	.	
	.	

The Committee on Appropriations (Rouson) recommended the following:

Senate Amendment to Amendment (892324) (with title amendment)

Delete lines 1910 - 1921.

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

And the title is amended as follows:

Delete lines 2064 - 2066

and insert:

under certain circumstances;

336290

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/02/2022	.	
	.	
	.	
	.	

The Committee on Appropriations (Rouson) recommended the following:

Senate Amendment to Amendment (892324) (with title amendment)

Delete lines 1888 - 1909.

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

And the title is amended as follows:

Delete lines 2062 - 2064

and insert:

met; amending s. 627.70152,

646840

576-03101-22

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Agriculture, Environment, and General Government)

A bill to be entitled

An act relating to property insurance; amending s. 489.147, F.S.; revising the definition of the term "prohibited advertisement"; amending s. 627.351, F.S.; deleting obsolete provisions related to eligibility thresholds for personal lines residential coverage with the Citizens Property Insurance Corporation; requiring the corporation to use a method for valuing dwelling replacement costs which is approved by the Office of Insurance Regulation; specifying qualifications requirements for certain members of the board of governors for the corporation; defining the term "demonstrated expertise in insurance"; revising conditions for eligibility for coverage with the corporation; providing for a required limited annual rate increase for specified polices; defining the term "primary residence"; revising the contents of a specified notice provided by the corporation; amending s. 627.3518, F.S.; deleting an obsolete provision related to implementing the clearinghouse program by a specified date; deleting an obsolete reporting requirement; conforming provisions to changes made by the act; amending s. 627.7011, F.S.; providing that certain provisions relating to homeowners' policies do not prohibit insurers from providing limited coverage on personal lines residential property insurance

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policies by including roof surface type reimbursement schedules; providing requirements for roof surface type reimbursement schedules; authorizing the conversion of a residential property insurance policy to a roof surface type reimbursement schedule under certain circumstances; providing that certain provisions relating to homeowners' policies do not prohibit insurers from providing coverage on personal lines residential property insurance policies that limits roof coverage to a stated value sublimit of coverage; providing requirements for stated value sublimits of coverages; providing that certain provisions relating to homeowners' policies do not prohibit certain insurers from offering roof reimbursement on the basis of replacement costs; reenacting ss. 624.424(10), 627.3517, and 627.712(1), F.S., relating to annual insurer statements, consumer choice, and required residential windstorm coverage, respectively, to incorporate the amendments made to s. 627.351, F.S., in references thereto; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 489.147, Florida Statutes, is amended to read:

489.147 Prohibited property insurance practices.—

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

(a) "Prohibited advertisement" means any written or

electronic communication by a contractor which ~~that~~ encourages, instructs, or induces a consumer to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage, if such communication does not state in a font size of at least 12 points and at least half as large as the largest font size used in the communication that:

1. The consumer is responsible for payment of any insurance deductible;

2. It is insurance fraud punishable as a felony of the third degree for a contractor to pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to property covered by a property insurance policy; and

3. It is insurance fraud punishable as a felony of the third degree to intentionally file an insurance claim containing any false, incomplete, or misleading information.

The term includes, but is not limited to, door hangers, business cards, magnets, flyers, pamphlets, and e-mails.

Section 2. Paragraphs (a), (c), (n), and (ii) of subsection (6) of section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a) The public purpose of this subsection is to ensure that there is an orderly market for property insurance for residents and businesses of this state.

1. The Legislature finds that private insurers are unwilling or unable to provide affordable property insurance coverage in this state to the extent sought and needed. The

absence of affordable property insurance threatens the public health, safety, and welfare and likewise threatens the economic health of the state. The state therefore has a compelling public interest and a public purpose to assist in assuring that property in this ~~the~~ state is insured and that it is insured at affordable rates so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting to the public health, safety, and welfare, to the economy of the state, and to the revenues of the state and local governments which are needed to provide for the public welfare. It is necessary, therefore, to provide affordable property insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends, therefore, that affordable property insurance be provided and that it continue to be provided, as long as necessary, through Citizens Property Insurance Corporation, a government entity that is an integral part of the state, and that is not a private insurance company. To that end, the corporation shall strive to increase the availability of affordable property insurance in this state, while achieving efficiencies and economies, and while providing service to policyholders, applicants, and agents which is no less than the quality generally provided in the voluntary market, for the achievement of the foregoing public purposes. Because it is essential for this government entity to have the maximum financial resources to pay claims following a catastrophic hurricane, it is the intent of the Legislature that the corporation continue to be an integral part of the state and

that the income of the corporation be exempt from federal income taxation and that interest on the debt obligations issued by the corporation be exempt from federal income taxation.

2. The Residential Property and Casualty Joint Underwriting Association originally created by this statute shall be known as the Citizens Property Insurance Corporation. The corporation shall provide insurance for residential and commercial property, for applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market. The corporation shall operate pursuant to a plan of operation approved by order of the Financial Services Commission. The plan is subject to continuous review by the commission. The commission may, by order, withdraw approval of all or part of a plan if the commission determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner, mobile home owner, dwelling, tenant, condominium unit owner, and similar policies; and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment building, and similar policies.

3. With respect to coverage for personal lines residential structures, and~~:~~

~~a. Effective January 1, 2014, a structure that has a dwelling replacement cost of $1 million or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $1 million or more, is not eligible for~~

~~coverage by the corporation. Such dwellings insured by the corporation on December 31, 2013, may continue to be covered by the corporation until the end of the policy term. The office shall approve the method used by the corporation for valuing the dwelling replacement cost for the purposes of this subparagraph. If a policyholder is insured by the corporation before being determined to be ineligible pursuant to this subparagraph and such policyholder files a lawsuit challenging the determination, the policyholder may remain insured by the corporation until the conclusion of the litigation.~~

~~b. Effective January 1, 2015, a structure that has a dwelling replacement cost of $900,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $900,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2014, may continue to be covered by the corporation only until the end of the policy term.~~

~~c. Effective January 1, 2016, a structure that has a dwelling replacement cost of $800,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $800,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2015, may continue to be covered by the corporation until the end of the policy term.~~

~~d.~~ effective January 1, 2017, a structure that has a dwelling replacement cost of $700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, is not eligible for coverage by the corporation. The corporation must use a method

for valuing the dwelling replacement cost which is approved by the office ~~Such dwellings insured by the corporation on December 31, 2016, may continue to be covered by the corporation until the end of the policy term~~. ~~The requirements of sub-subparagraphs b.-d. do not apply~~ However, in counties where the office determines there is not a reasonable degree of competition,~~. In such counties~~ a ~~personal lines residential~~ structure that has a dwelling replacement cost of less than $1 million, or a single condominium unit that has a combined dwelling and contents replacement cost of less than $1 million, is eligible for coverage by the corporation.

4. It is the intent of the Legislature that policyholders, applicants, and agents of the corporation receive service and treatment of the highest possible level but never less than that generally provided in the voluntary market. It is also intended that the corporation be held to service standards no less than those applied to insurers in the voluntary market by the office with respect to responsiveness, timeliness, customer courtesy, and overall dealings with policyholders, applicants, or agents of the corporation.

5.a. Effective January 1, 2009, a personal lines residential structure that is located in the "wind-borne debris region," as defined in s. 1609.2, International Building Code (2006), and that has an insured value on the structure of $750,000 or more is not eligible for coverage by the corporation unless the structure has opening protections as required under the Florida Building Code for a newly constructed residential structure in that area. A residential structure is deemed to comply with this sub-subparagraph if it has shutters or opening

protections on all openings and if such opening protections complied with the Florida Building Code at the time they were installed.

b. Any major structure, as defined in s. 161.54(6)(a), that is newly constructed, or rebuilt, repaired, restored, or remodeled to increase the total square footage of finished area by more than 25 percent, pursuant to a permit applied for after July 1, 2015, is not eligible for coverage by the corporation if the structure is seaward of the coastal construction control line established pursuant to s. 161.053 or is within the Coastal Barrier Resources System as designated by 16 U.S.C. ss. 3501-3510.

6. With respect to wind-only coverage for commercial lines residential condominiums, effective July 1, 2014, a condominium shall be deemed ineligible for coverage if 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days.

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide



coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

g. Effective January 1, 2013, the corporation shall offer a basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt



property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation

and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance

outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of the state, one of whom is appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer

representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b) at the time of appointment or reappointment. The Chief Financial Officer shall designate one of the appointees as chair. On or after July 1, 2022, an appointee designated as chair must have demonstrated expertise in insurance or must have at least 1 year of experience serving on the board of governors. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. The executive director must, at the time of the appointment, have

the experience, character, and qualifications required under s. 624.404(3) to serve as the chief executive officer of an insurer. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board. As used in this sub-subparagraph, the term "demonstrated expertise in insurance" means at least 10 years' experience:

(I) In property and casualty insurance as a full-time employee, officer, or owner of a licensed insurance agency or an insurer authorized to transact property insurance in this state; or

(II) As an insurance regulator or as an executive or officer of an insurance trade association.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance

business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, ~~if the offer is equal to or less than the corporation's renewal premium for comparable~~

~~coverage,~~ the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from the corporation. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the

corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk

is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 20 ~~15~~ percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, ~~if the offer is equal to or less than the corporation's renewal premium for comparable coverage,~~ the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's

usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy ~~that is~~ offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of

coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must be available to defray deficits in that account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 do not apply.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors. If catastrophe reinsurance is not available at reasonable rates, the corporation need not purchase it, but the corporation shall include the costs of reinsurance to cover its projected 100-year probable maximum loss in its rate calculations even if it does not purchase catastrophe reinsurance.

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain

insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. Must provide that, with respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency


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assessment to be collected from policyholders under sub-subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who throughout such appointments also hold an appointment as defined in s. 626.015 by an insurer who is authorized to write and is actually writing or renewing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

15. Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

a. Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as those of the primary dwelling;

b. Carports that are aluminum or carports that are not covered by the same or substantially the same materials as those of the primary dwelling; and

c. Patios that have a roof covering ~~that is~~ constructed of materials that are not the same or substantially the same materials as those of the primary dwelling.


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The corporation shall make available a policy for mobile homes or manufactured homes for a minimum insured value of at least $3,000.

18. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

19. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

20. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

21. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgment signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND

PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

a. The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgment and provide a copy of the statement to the policyholder as part of the first renewal after the effective date of this subparagraph.

b. The signed acknowledgment form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

(n)1. Rates for coverage provided by the corporation must be actuarially sound and subject to s. 627.062, except as

otherwise provided in this paragraph. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes.

5. Notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement

a rate increase which, except for sinkhole coverage, does not exceed the following for any single personal lines residential policy issued by the corporation that covers an insured's primary residence, and any single commercial lines residential policy issued by the corporation, excluding coverage changes and surcharges:

a. Eleven percent for 2022.

b. Twelve percent for 2023.

c. Thirteen percent for 2024.

d. Fourteen percent for 2025.

e. Fifteen percent for 2026 and all subsequent years.

6. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

7. The corporation's implementation of rates as prescribed in subparagraph 5. shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing for each commercial and personal line of business the corporation writes.

8. As used in this paragraph, "primary residence" means the dwelling that the insured has represented as their permanent home on the insurance application or otherwise to the corporation.

(ii) The corporation shall revise the programs adopted pursuant to sub-subparagraph (q)3.a. for personal lines residential policies to maximize policyholder options and encourage increased participation by insurers and agents. After

January 1, 2017, a policy may not be taken out of the corporation unless the provisions of this paragraph are met.

1. The corporation must publish a periodic schedule of cycles during which an insurer may identify, and notify the corporation of, policies that the insurer is requesting to take out. A request must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.

2. The corporation must maintain and make available to the agent of record a consolidated list of all insurers requesting to take out a policy. The list must include a description of the coverage offered and the estimated premium for each take-out request.

3. The corporation must provide written notice to the policyholder and the agent of record regarding all insurers requesting to take out the policy, which notice must inform that a take-out offer that is not more than 20 percent greater than the corporation's premium renders the risk ineligible for coverage from ~~and regarding the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with~~ the corporation. The notice must be in a format prescribed by the corporation and include, for each take-out offer:

a. The amount of the estimated premium;

b. A description of the coverage; and

c. A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

Section 3. Section 627.3518, Florida Statutes, is amended to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.~~ The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.~~

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

(a) "Corporation" means Citizens Property Insurance Corporation.

(b) "Exclusive agent" means any licensed insurance agent that has, by contract, agreed to act exclusively for one company or group of affiliated insurance companies and is disallowed by the provisions of that contract to directly write for any other unaffiliated insurer absent express consent from the company or group of affiliated insurance companies.

(c) "Independent agent" means any licensed insurance agent not described in paragraph (b).

(d) "Program" means the clearinghouse created under this section.

(2) In order to confirm eligibility with the corporation and to enhance access of new applicants for coverage and existing policyholders of the corporation to offers of coverage from authorized insurers, the corporation shall establish a program for personal residential risks in order to facilitate the diversion of ineligible applicants and existing policyholders from the corporation into the voluntary insurance market. The corporation shall also develop appropriate procedures for facilitating the diversion of ineligible applicants and existing policyholders for commercial residential coverage into the private insurance market ~~and shall report such procedures to the President of the Senate and the Speaker of the~~

~~House of Representatives by January 1, 2014~~.

(3) The corporation board shall establish the clearinghouse program as an organizational unit within the corporation. The program shall have all the rights and responsibilities in carrying out its duties as a licensed general lines agent, but may not be required to employ or engage a licensed general lines agent or to maintain an insurance agency license to carry out its activities in the solicitation and placement of insurance coverage. In establishing the program, the corporation may:

(a) Require all new applications, and all policies due for renewal, to be submitted for coverage to the program in order to facilitate obtaining an offer of coverage from an authorized insurer before binding or renewing coverage by the corporation.

(b) Employ or otherwise contract with individuals or other entities for appropriate administrative or professional services to effectuate the plan within the corporation in accordance with the applicable purchasing requirements under s. 627.351.

(c) Enter into contracts with any authorized insurer to participate in the program and accept an appointment by such insurer.

(d) Provide funds to operate the program. Insurers and agents participating in the program are not required to pay a fee to offset or partially offset the cost of the program or use the program for renewal of policies initially written through the clearinghouse.

(e) Develop an enhanced application that includes information to assist private insurers in determining whether to make an offer of coverage through the program.

(f) For personal lines residential risks, require, before

approving all new applications for coverage by the corporation, that every application be subject to a period of 2 business days when any insurer participating in the program may select the application for coverage. The insurer may issue a binder on any policy selected for coverage for a period of at least 30 days but not more than 60 days.

(4) Any authorized insurer may participate in the program; however, participation is not mandatory for any insurer. Insurers making offers of coverage to new applicants or renewal policyholders through the program:

(a) May not be required to individually appoint any agent whose customer is underwritten and bound through the program. Notwithstanding s. 626.112, insurers are not required to appoint any agent on a policy underwritten through the program for as long as that policy remains with the insurer. Insurers may, at their election, appoint any agent whose customer is initially underwritten and bound through the program. In the event an insurer accepts a policy from an agent who is not appointed pursuant to this paragraph, and thereafter elects to accept a policy from such agent, the provisions of s. 626.112 requiring appointment apply to the agent.

(b) Must enter into a limited agency agreement with each agent that is not appointed in accordance with paragraph (a) and whose customer is underwritten and bound through the program.

(c) Must enter into its standard agency agreement with each agent whose customer is underwritten and bound through the program when that agent has been appointed by the insurer pursuant to s. 626.112.

(d) Must comply with s. 627.4133(2).

(e) May participate through their single-designated managing general agent or broker; however, the provisions of paragraph (6)(a) regarding ownership, control, and use of the expirations continue to apply.

(f) Must pay to the producing agent a commission equal to that paid by the corporation or the usual and customary commission paid by the insurer for that line of business, whichever is greater.

(5) Notwithstanding s. 627.3517, any applicant for new coverage from the corporation is not eligible for coverage from the corporation if provided an offer of coverage from an authorized insurer through the program at a premium that is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. Whenever an offer of coverage for a personal lines risk is received for a policyholder of the corporation at renewal from an authorized insurer through the program, if the offer is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. ~~equal to or less than the corporation's renewal premium for comparable coverage~~, the risk is not eligible for coverage with the corporation. In the event an offer of coverage for a new applicant is received from an authorized insurer through the program, and the premium offered exceeds the eligibility threshold contained in s. 627.351(6)(c)5.a., the applicant or insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. In the event an offer of coverage for a personal lines risk is received from an authorized insurer at renewal through the program, and the premium offered is at or below the eligibility threshold established in s.

627.351(6)(c)5.a. ~~more than the corporation's renewal premium for comparable coverage~~, the insured is not eligible to ~~may elect to accept such coverage, or may elect to accept or~~ continue coverage with the corporation. Section 627.351(6)(c)5.a.(I) does not apply to an offer of coverage from an authorized insurer obtained through the program. An applicant for coverage from the corporation who was declared ineligible for coverage at renewal by the corporation in the previous 36 months due to an offer of coverage pursuant to this subsection shall be considered a renewal under this section if the corporation determines that the authorized insurer making the offer of coverage pursuant to this subsection continues to insure the applicant and increased the rate on the policy in excess of the increase allowed for the corporation under s. 627.351(6)(n)5.

(6) Independent insurance agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Are granted and must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Such ownership is granted for as long as the insured remains with the agency or until sold or surrendered in writing by the agent. Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information

may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) May accept an appointment from any insurer participating in the program.

(d) May enter into either a standard or limited agency agreement with the insurer, at the insurer's option.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their independent agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer participating in the program.

(7) Exclusive agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) Must only facilitate the placement of an offer of coverage from an insurer whose limited servicing agreement is approved by that exclusive agent's exclusive insurer.

(d) May enter into a limited servicing agreement with the insurer making an offer of coverage, and only after the exclusive agent's insurer has approved the limited servicing agreement terms. The exclusive agent's insurer must approve a limited service agreement for the program for any insurer for which it has approved a service agreement for other purposes.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their exclusive agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer making an offer of coverage to that applicant.

(8) Submission of an application for coverage by the corporation to the program does not constitute the binding of coverage by the corporation, and failure of the program to obtain an offer of coverage by an insurer may not be considered acceptance of coverage of the risk by the corporation.

(9) The 45-day notice of nonrenewal requirement set forth in s. 627.4133(2)(b)5. applies when a policy is nonrenewed by the corporation because the risk has received an offer of coverage pursuant to this section which renders the risk ineligible for coverage by the corporation.

(10) The program may not include commercial nonresidential policies.

(11) Proprietary business information provided to the corporation's clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(a) As used in this subsection, the term "proprietary business information" means information, regardless of form or characteristics, which is owned or controlled by an insurer and:

1. Is identified by the insurer as proprietary business information and is intended to be and is treated by the insurer as private in that the disclosure of the information would cause harm to the insurer, an individual, or the company's business operations and has not been disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;

2. Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to the clearinghouse; and

3. Includes:

a. Trade secrets, as defined in s. 688.002.

b. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Proprietary business information may be found in underwriting criteria or instructions which are used to identify and select risks through the program for an offer of coverage and are shared with the clearinghouse to facilitate the shopping of

risks with the insurer.

(b) The clearinghouse may disclose confidential and exempt proprietary business information:

1. If the insurer to which it pertains gives prior written consent;

2. Pursuant to a court order; or

3. To another state agency in this or another state or to a federal agency if the recipient agrees in writing to maintain the confidential and exempt status of the document, material, or other information and has verified in writing its legal authority to maintain such confidentiality.

Section 4. Paragraphs (f), (g), and (h) are added to subsection (5) of section 627.7011, Florida Statutes, to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.—

(5) This section does not:

(f)1. Prohibit an insurer, notwithstanding paragraph (1)(a), from providing limited coverage on a personal lines residential property insurance policy by including a roof surface type reimbursement schedule. If included in the policy, a roof surface type reimbursement schedule must do all of the following:

a. Provide reimbursement for repair, replacement, and installation based on the annual age of a roof surface type.

b. Provide full replacement coverage for:

(I) Any roof surface type less than 10 years old;

(II) A total loss to a primary structure in accordance with the valued policy law under s. 627.702 which is caused by a covered peril; and

(III) A loss to the roof caused by a storm declared to be a hurricane by the National Hurricane Center.

c. Use annual depreciation amounts that:

(I) Are actuarially justified and meet the requirements of s. 627.062; and

(II) Do not exceed 4 percent unless actuarially justified.

d. Be approved by the office.

e. Include at the top of the roof surface type schedule, in bold type no smaller than 12 points, the following statement:

"PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO PURCHASE COVERAGE ON YOUR ROOF ACCORDING TO A ROOF SURFACE TYPE REIMBURSEMENT SCHEDULE. IF YOUR ROOF IS DAMAGED BY A COVERED PERIL, YOU WILL RECEIVE A PAYMENT AMOUNT FOR YOUR ROOF ACCORDING TO THE SCHEDULE BELOW. BE ADVISED THAT THIS MAY RESULT IN YOU HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR ROOF. PLEASE DISCUSS WITH YOUR INSURANCE AGENT."

f. Be provided to the insured with the policy documents at issuance and renewal.

2. A residential property insurance policy may convert to a roof surface type reimbursement schedule at renewal if the roof is at least 10 years old and the policyholder:

a. Receives a Notice of Change in Policy Terms pursuant to s. 627.43141; and

b. Accepts the written notice of renewal premium required under s. 627.4133, by paying the premium.

(g) Prohibit an insurer, notwithstanding paragraph (1)(a),

from providing coverage on a personal lines residential property insurance policy that limits coverage for a roof to a stated value sublimit of coverage. If included in a policy, a stated value sublimit of coverage must do all of the following:

1. Provide full replacement coverage for:

a. Any roof surface type less than 10 years old;

b. A total loss to a primary structure in accordance with the valued policy law under s. 627.702 which is caused by a covered peril; and

c. A loss to the roof caused by a storm declared to be a hurricane by the National Hurricane Center.

2. Include in the policy documents at issuance and at renewal, in bold type no smaller than 12 points, the following statement:

"PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO PURCHASE A STATED VALUE SUBLIMIT OF COVERAGE ON YOUR ROOF. BE ADVISED THAT THIS MAY RESULT IN YOU HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR ROOF. PLEASE DISCUSS WITH YOUR INSURANCE AGENT."

(h) Prohibit an insurer that provides roof reimbursement on the basis of a roof surface type reimbursement schedule or that limits coverage for a roof to a stated value sublimit of coverage from also offering roof reimbursement on the basis of replacement costs.

Section 5. For the purpose of incorporating the amendments made by this act to section 627.351, Florida Statutes, in a

reference thereto, subsection (10) of section 624.424, Florida Statutes, is reenacted to read:

624.424 Annual statement and other information.—

(10) Each insurer or insurer group doing business in this state shall file on a quarterly basis in conjunction with financial reports required by paragraph (1)(a) a supplemental report on an individual and group basis on a form prescribed by the commission with information on personal lines and commercial lines residential property insurance policies in this state. The supplemental report shall include separate information for personal lines property policies and for commercial lines property policies and totals for each item specified, including premiums written for each of the property lines of business as described in ss. 215.555(2)(c) and 627.351(6)(a). The report shall include the following information for each county on a monthly basis:

(a) Total number of policies in force at the end of each month.

(b) Total number of policies canceled.

(c) Total number of policies nonrenewed.

(d) Number of policies canceled due to hurricane risk.

(e) Number of policies nonrenewed due to hurricane risk.

(f) Number of new policies written.

(g) Total dollar value of structure exposure under policies that include wind coverage.

(h) Number of policies that exclude wind coverage.

Section 6. For the purpose of incorporating the amendments made by this act to section 627.351, Florida Statutes, in a reference thereto, section 627.3517, Florida Statutes, is

reenacted to read:

627.3517 Consumer choice.—No provision of s. 627.351, s. 627.3511, or s. 627.3515 shall be construed to impair the right of any insurance risk apportionment plan policyholder, upon receipt of any keepout or take-out offer, to retain his or her current agent, so long as that agent is duly licensed and appointed by the insurance risk apportionment plan or otherwise authorized to place business with the insurance risk apportionment plan. This right shall not be canceled, suspended, impeded, abridged, or otherwise compromised by any rule, plan of operation, or depopulation plan, whether through keepout, take-out, midterm assumption, or any other means, of any insurance risk apportionment plan or depopulation plan, including, but not limited to, those described in s. 627.351, s. 627.3511, or s. 627.3515. The commission shall adopt any rules necessary to cause any insurance risk apportionment plan or market assistance plan under such sections to demonstrate that the operations of the plan do not interfere with, promote, or allow interference with the rights created under this section. If the policyholder's current agent is unable or unwilling to be appointed with the insurer making the take-out or keepout offer, the policyholder shall not be disqualified from participation in the appropriate insurance risk apportionment plan because of an offer of coverage in the voluntary market. An offer of full property insurance coverage by the insurer currently insuring either the ex-wind or wind-only coverage on the policy to which the offer applies shall not be considered a take-out or keepout offer. Any rule, plan of operation, or plan of depopulation, through keepout, take-out, midterm assumption, or any other

means, of any property insurance risk apportionment plan under s. 627.351(2) or (6) is subject to ss. 627.351(2)(b) and (6)(c) and 627.3511(4).

Section 7. For the purpose of incorporating the amendments made by this act to section 627.351, Florida Statutes, in a reference thereto, subsection (1) of section 627.712, Florida Statutes, is reenacted to read:

627.712 Residential windstorm coverage required; availability of exclusions for windstorm or contents.—

(1) An insurer issuing a residential property insurance policy must provide windstorm coverage. Except as provided in paragraph (2)(c), this section does not apply to risks that are eligible for wind-only coverage from Citizens Property Insurance Corporation under s. 627.351(6), and risks that are not eligible for coverage from Citizens Property Insurance Corporation under s. 627.351(6)(a)3. or 5. A risk ineligible for coverage by the corporation under s. 627.351(6)(a)3. or 5. is exempt from this section only if the risk is located within the boundaries of the coastal account of the corporation.

Section 8. This act shall take effect July 1, 2022.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1728
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Banking and Insurance Committee; and Senator Boyd
SUBJECT:	Property Insurance
DATE:	March 2, 2022 REVISED: 3/3/22

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold/Knudson	Knudson	BI	**Fav/CS**
2.	Sanders	Betta	AEG	**Recommend: Fav/CS**
3.	Sanders/Knudson	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1728 addresses contractor solicitations related to property insurance roof claims, the application of a separate roof deductible for roof losses to residential property, and various aspects of Citizens Property Insurance Corporation (Citizens or corporation).

Contractor Advertisement Related to Property Insurance Claims for Roof Damage

The bill allows contractors to make written or electronic communications that encourage, instruct, or induce a consumer to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage if such communication includes the following disclosures:

- The consumer is responsible for payment of any insurance deductible;
- It is insurance fraud punishable as a felony of the third degree for a contractor to pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to property covered by a property insurance policy; and
- It is insurance fraud punishable as a felony of the third degree to intentionally file an insurance claim containing any false, incomplete or misleading information.

The disclosures must be stated in a font size that is at least 12 points and at least half as large as the largest font used in the solicitation. With this change, contractors will no longer be prohibited

from making such solicitations so long as the solicitation includes the aforementioned disclosures.

Separate Roof Deductible

The bill allows property insurers to require a separate roof deductible as a condition of eligibility or renewal of a residential property insurance policy, if all of the following conditions are met:

- The roof deductible may not exceed two percent of the policy's dwelling coverage limit.
- The premium for such coverage includes an actuarially sound premium discount or credit for the impact of the roof deductible.
- If the roof deductible is added to the policy at renewal, the insurer must provide a notice of change in policy terms pursuant to section 627.43141, Florida Statutes.
- The roof deductible does not apply to:
  - A total loss to a primary structure in accordance with the valued policy law;
  - Under section 627.702, Florida Statutes, which is caused by a covered peril;
  - A roof loss caused by a hurricane as defined by section 627.4025(2), Florida Statutes; or
  - A roof loss that can be repaired without replacement of the roof.
- If a roof deductible is applied, no other policy deductible may be applied to the loss. If, however, a roof deductible is not applied, the all-other-perils deductible or the hurricane deductible may be applied.

The bill specifies that a roof deductible provision may only be included in an insurance policy if the OIR determines the deductible provisions of the policy are clear and unambiguous. The bill also requires that any personal lines residential property insurance policy that contains a separate roof deductible must include the following disclosure in at least 18-point, boldfaced type: THIS POLICY CONTAINS A SEPARATE DEDUCTILE FOR ROOF LOSSES WHICH MAY RSULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU. The policy must also prominently display the actual dollar value of the roof deductible on the policy declarations page at issuance, and for renewal, on the renewal declarations page or the premium renewal notice.

The bill allows residential property insurers that utilize a roof deductible to provide only actual cash value reimbursement on a roof loss until the insurer receives reasonable proof of payment by the policyholder of the roof deductible.

Citizens Property Insurance Corporation (Citizens)

The bill makes it a requirement, rather than an option, that Citizens merge their Personal Lines, Commercial Lines, and Coastal Accounts if financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are no longer outstanding.

The bill requires certain appointed members of the Citizens Board of Governors (board) to have demonstrated expertise in insurance at the time of appointment or reappointment. The bill requires that on or after July 1, 2022, an appointee designated as chair must have demonstrated expertise in insurance or must have at least one experience serving on the board. The bill revises the term "demonstrated expertise in insurance" to mean at least ten years' experience:

- In property and casualty insurance as a full time employee, officer, or owner of a licensed insurance agency or an insurer authorized to transact property insurance in this state; or
- As an insurer regulator or as an executive or officer of an insurance trade association.

The bill also requires that the Citizens executive director must, at the time of appointment, have the experience, character and qualifications necessary to serve in that role for an insurer that has a certificate of authority to transact insurance in Florida.

The bill limits the application of the Citizens "glidepath" to personal lines residential policies covering an insured's *primary residence* and any commercial lines residential policy. "Glidepath" is the term commonly used to refer to the statutory limitation on rate increases that may be imposed on an individual Citizens policyholder. The maximum rate increase that may be imposed on any single policy, excluding coverage changes and surcharges, is 11 percent for 2022.[1] Other properties would be charged the actuarially indicated rate.

The bill provides that when Citizens assumes a policy from an unsound insurer, the premium shall be the higher of the last premium amount charged by the unsound insurer to the policyholder or the premium that would be normally charged by Citizens to carry said risk. If an unsound insurer's premium is applied to the policy, that premium would remain in place unchanged until the rate for Citizens, that would be normally applicable, exceeds the amount last charged by the unsound insurer.

The bill provides whenever an offer is received by a Citizens personal or commercial lines residential policyholder, the risk is not eligible for Citizens coverage *unless* the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from Citizens. The bill also applies the 20 percent standard to new applicants for Citizens commercial lines residential coverage. Under current law, Citizens policyholders remain eligible for coverage unless the offer from an authorized insurer is less than the policyholder's Citizens renewal premium.

The bill authorizes surplus lines insurers to participate in Citizens' depopulation, take-out, and keep-out plans if Citizens' policy count exceeds 700,000 policies. Citizens' policy count was 759,305 policies as of December 31, 2021. The surplus lines insurer must: meet financial requirements; provide notice to the policyholder which outlines any coverage differences and explain surplus lines policies are not covered by the Florida Insurance Guaranty Association; and provide coverage similar to that provided by Citizens. A risk with a personal residential dwelling replacement cost or a single condominium unit with a combined dwelling and contents replacement cost that is less than $700,000, remains eligible for Citizens regardless of receipt of an offer of comparable coverage from a surplus lines insurer. If such risk has a replacement cost of $700,000 or more, however, the risk is ineligible for Citizens coverage upon receiving an offer of comparable coverage from a surplus lines insurer that is not greater than the premium for Citizens coverage.

[1] The maximum rate increase will increase by one percent for each subsequent year until it reaches 15 percent for 2026.

Notice of Intent to Initiate Litigation

The bill allows a defendant to recover reasonable attorney fees and costs if a claimant's suit against the defendant is dismissed for failure to submit a notice of intent to initiate litigation

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

The bill has an effective date of July 1, 2022.

II. Present Situation:

Florida Residential Property Insurance Market Data and CS/CS/CS/SB 76 (2021)

According to the Florida Office of Insurance Regulation (OIR), from 2017 through the second quarter of 2021, Florida domestic property insurers had cumulative net underwriting losses that resulted in a cumulative net income in excess of negative one billion dollars.[2]

Prior to the 2021 Legislative Session, the OIR reported an increasing trend of domestic property insurers filing for rate increases. Insurers submitted 105 rate filings in 2020 for increases of 10 percent or more, with the OIR approving 55 of those filings. In 2016, the OIR approved only six rate increases of at least 10 percent.[3]

In a presentation to the Florida Senate Committee on Banking and Insurance on January 12, 2021, the State Insurance Commissioner attributed the net underwriting losses, combined ratios, and resulting rate increases displayed above to several related trends and behaviors present in Florida's domestic property insurance market:

- Claims with litigation;
- Claims solicitation; and
- Adverse loss reserve development.[4]

In 2020, the OIR conducted a data call of Florida's domestic property insurers.[5] According to the State Insurance Commissioner, the results of the data call showed the severity of non-weather water claims with litigation is nearly double that of the claims that are closed without litigation.[6]

[2] David Altmaier, Florida Office of Insurance Regulation, Overview of the Florida Insurance Market, pg. 6 (Sept. 22, 2021). https://www.flsenate.gov/Committees/Show/BI/MeetingPacket/5252/9419_MeetingPacket_5252_2.pdf (last accessed Jan. 30, 2022).
[3] Florida Senate, *Meeting of the Committee on Banking and Insurance* (Jan. 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).
[4] Florida Senate, *Meeting of the Committee on Banking and Insurance* (Jan. 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).
[5] https://www.floir.com/Sections/PandC/AssignmentofBenefits.aspx (last visited Jan. 27, 2021).
[6] Florida Senate, *Meeting of the Committee on Banking and Insurance* (Jan. 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).

According to the OIR, the increased severity of claims involving litigation is driving adverse loss reserve development, leading to high rate filings.[7] Loss reserve development is the difference between the original loss as initially reserved by the insurer and its subsequent evaluation later or at the time of its final disposal.[8] When adverse loss reserve development occurs, the claim costs more than its reserve was originally estimated by the insurer.

In response to the aforementioned challenges in Florida's property insurance market, the 2021 Legislature passed CS/CS/CS/SB 76 (2021).[9] The bill addressed multiple aspects of the property insurance market, including solicitations regarding roof claims, notice of bringing a civil action in a property insurance dispute, attorney fee awards in first-party property insurance litigation, and the eligibility standards and ratemaking of Citizens.

Property Insurance Practices by Contractors

The 2021 property insurance law attempted to address increases in roof claims by prohibiting contractors, and persons acting on behalf of contractors, from:

- Soliciting residential property owners through prohibited advertisements, which are communications to a consumer that encourage, instruct, or induce a consumer to contact a contractor to file an insurance claim for roof damage;
- Offering the residential property owner consideration to perform a roof inspection or file an insurance claim;
- Offering or receiving consideration for referrals when property insurance proceeds are payable;
- Engaging in unlicensed public adjusting; and
- Providing an authorization agreement to the insured without providing a good faith estimate.

The above acts are subject to license discipline by the Department of Business and Professional Regulation and a $10,000 fine per violation. The law provides the residential property owner may void the contract with the contractor within 10 days of its execution if the contractor fails to provide notice to the residential property owner of the contractor's prohibited practices.

The law prohibits licensed contractors and subcontractors from advertising, soliciting, offering to handle, handling, or performing public adjuster (PA) services without a license. The prohibition does not prohibit the contractor from recommending the consumer consider contacting his or her insurer to determine if the proposed repair is covered by insurance.

The law prohibits a PA, PA apprentice, or person acting on behalf of a PA or PA apprentice, from offering financial inducements for allowing a roof inspection of residential property or making an insurance claim for roof damage. The law also prohibits them from offering or accepting consideration for referring services related to a roof claim. Each violation subjects the PA or PA licensee to up to a $10,000 fine. Unlicensed persons not otherwise exempted from PA

[7] Florida Senate, *Meeting of the Committee on Banking and Insurance* (Jan. 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation)
[8] International Risk Management Institute, *Glossary*, https://www.irmi.com/term/insurance-definitions/loss-development (last visited Jan. 27, 2021).
[9] Ch. 2021-77, Laws of Florida.

licensure commit the unlicensed practice of public adjusting when they do these prohibited acts, and are subject to a $10,000 fine per act and the criminal penalty for unlicensed activity.

Regulations of Commercial Speech

The United States Supreme Court set forth the standards for analyzing whether a restriction on commercial speech[10] violates the First Amendment of the United States Constitution in the case of *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*.[11] Justice Powell succinctly set forth the standards.

> In commercial speech cases, then, a four-part analysis has developed. At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.[12]

The court explained in *Central Hudson* that if a law restricts commercial speech that address speech that is not misleading or related to unlawful activity, the government's power to regulate such speech is limited:

> If the communication is neither misleading nor related to unlawful activity, the government's power is more circumscribed. The State must assert a substantial interest to be achieved by restrictions on commercial speech. Moreover, the regulatory technique must be in proportion to that interest. The limitation on expression must be designed carefully to achieve the State's goal. Compliance with this requirement may be measured by two criteria. First, the restriction must directly advance the state interest involved; the regulation may not be sustained if it provides only ineffective or remote support for the government's purpose. Second, if the governmental interest could be served as well by a more limited restriction on commercial speech, the excessive restrictions cannot survive.

Florida Courts have applied the *Central Hudson* test to determine whether government restrictions on commercial speech violate article 1, section 4 of the Florida Constitution.[13]

The United State Supreme Court in *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, noted state laws that require disclosures in advertising do not receive the same degree of constitutional protection as a prohibition on commercial free speech.

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[10] Commercial speech is expression related solely to the economic interests of the speaker and its audience.
[11] 447 U.S. 557 (1980).
[12] See *Central Hudson Gas*, 447 US. 557 at pg. 565.
[13] See *Kortum v. Sink*, 54 So.3d 1012 (Fla. 1st DCA, 2010).

> Because the extension of First Amendment protection to commercial speech is justified principally by the value to consumers of the information such speech provides, appellant's constitutionally protected interest in not providing any particular factual information in his advertising is minimal. An advertiser's rights are adequately protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers.[14]

The United States Supreme Court (Court) used the *Zauderer* test to uphold disclosure requirements in *Milavetz, Gallop & Milavetz, P.A., v. U.S.* In delivering the opinion of the Court, Supreme Court Associate Justice Sonia Sotomayor upheld disclosure requirements placed by federal law[15] upon debt relief agents that provide bankruptcy assistance for payment because "…the disclosures are intended to combat the problem of inherently misleading commercial advertisements… [and] … entail only an accurate statement of the advertiser's legal status and the character of the assistance provided."[16]

Federal Preliminary Injunction against Provisions of SB 76 Banning Prohibited Advertisements

On July 11, 2021, a federal district court enjoined the enforcement of the provisions of CS/CS/CS/SB 76 (2021) that ban contractors from making prohibited advertisements regarding property insurance roof claims.[17] Within the law, a prohibited advertisement is any written or electronic communication that encourages, instructs, or induces a consumer to contract a public adjuster or contractor for purposes of making an insurance claim for roof damage. The preliminary injunction prevents the enforcement of specific prohibitions in newly created s. 489.147, F.S., specifically (2)(a), (3), and (4)(b), F.S. These provisions are:

- (2)(a): A contractor may not directly or indirectly solicit a residential property owner by means of a prohibited advertisement;
- (3): A contractor who violates this section is subject to a disciplinary proceeding through Department of Business and Professional Regulation (DBPR) under s. 489.129, F.S., and is subject to a $10,000 fine for each violation; and
- (4)(b): An unlicensed person who violates s. 489.147, F.S., is subject to the penalties in s. 489.13, F.S., and is subject to a fine of up to $10,000 for each violation.

The judge issued the injunction on the basis that these provisions of the bill violate First Amendment commercial free speech rights of contractors under the United States Constitution. The injunction against (3) and (4)(b) above only apply to the prohibited advertisement provision. The prohibitions in the s. 489.147, F.S., regarding roof claims that ban offering inducements to consumers, accepting or paying referral fees, interpreting the insurance policy, or signing a contract with a consumer for roof repairs without providing a good faith estimate remain valid and enforceable.

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[14] *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, at pg. 628 (1985).
[15] 11 U.S.C. s. 528 (2006).
[16] *Milavetz, Gallop & Milavetz, P.A., v. U.S.*, 559 U.S. 229 at pg. 231 (2010).
[17] *Gale Force Roofing & Restoration, LLC v. Julie I. Brown*, 2021 WL 3046800, Case No. 4:21CV246-MW/MAF (U.S.D.C., N.D. Fla., Tallahassee Division) (Order Granting Preliminary Injunction, July 11, 2021).

The judge did not enjoin enforcement of the rest of the bill, thus the only provisions affected are those mentioned above that were specifically addressed by the preliminary injunction order.

Property Insurance Deductibles

Section 627.701, F.S., governs to use of deductibles and coinsurance property insurance policies in this state. The law requires insurers to offer alternative deductible amounts applicable to hurricane losses equal to $500, two percent, five percent, and 10 percent of the policy dwelling limits. However, the $500 hurricane deductible need not be offered if certain conditions are met. If the policy covers a risk with dwelling limits of at least $100,000, but less than $250,000, the insurer may, in lieu of offering a $500 hurricane deductible, may offer a policy that the insurer guarantees it will not nonrenew for reasons of reducing hurricane loss for one renewal period and that contains up to a two percent hurricane deductible. If the policy covers a risk with a dwelling replacement cost of $250,000 or more, the insurer need not offer the $500 hurricane deductible. The law requires that any policy that contains a separate hurricane deductible must include on its face in boldfaced type no smaller than 18 points, a statement that, "THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR HURRICANE LOSSES, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU." The hurricane deductible must be found to be clear and unambiguous by the Office of Insurance Regulation. The insurer must compute and prominently display the actual dollar value of the hurricane deductible on the policy declarations page at issuance and, at renewal, on the renewal declarations page or premium renewal notice.

Replacement Cost and Actual Cash Value Loss Settlement Provisions

There are two primary settlement options available when purchasing a homeowner's property insurance policy: *replacement cost* and *actual cash value*. Replacement cost is usually defined in the policy as the cost to repair or replace the damaged property with materials of like kind and quality, without any deduction for depreciation.[18] Replacement cost is designed to cover the difference between what the property is actually worth and what it would cost to rebuild or repair that property.[19] Following a covered loss, the insurer assumes the full cost of repairing or replacing the damaged property.[20]

By contrast, actual cash value is the cost to repair or replace the damaged property with material of like kind and quality, minus the cost of depreciation due to use, wear, obsolescence, or age.[21] Following a covered loss, the insured assumes the cost to cover the difference between the depreciated value of the damaged property and the cost of repairing or replacing it.
Florida law currently requires insurers writing homeowner's property insurance policies to offer adjustment to the dwelling, including the roof, on the basis of replacement cost.[22] The OIR will

[18] National Association of Insurance Commissioners, *Glossary of Insurance Terms*, https://content.naic.org/consumer_glossary.htm (last visited Jan. 4, 2021).
[19] See *Trinidad v. Florida Peninsula Ins. Co.*, 121 So.3d 433, 438 (Fla. 2013) (quoting *State Farm Fire & Cas. Co, v. Patrick*, 647 So.2d 983 (Fla. 3d DCA 1994))
[20] Insureds that elect for adjustment on the basis of replacement cost receive greater coverage than adjustment on the basis of actual cash value because depreciation is not excluded from replacement cost, whereas it is generally excluded from actual cash value. See *Trinidad* at 438 (quoting *Goff v. State Farm Florida Ins. Co.*, 999 So.2d 684, 689 (Fla. 2d DCA 2008))
[21] National Association of Insurance Commissioner, *Glossary of Insurance Terms*, https://content.naic.org/consumer_glossary.htm (last visited Jan. 4, 2021).
[22] Section 627.7011(1), F.S.

approve policy forms that adjust roof losses on the basis of actual cash value, or the depreciated value of the roof. The insurer must, however, also offer replacement cost adjustment on the roof before issuing the policy.

Fannie Mae and Freddie Mac Minimum Insurance Requirements

The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) provide liquidity, stability, and affordability to the mortgage market by buying mortgages from lenders and either holding the mortgages in their own portfolios or packaging the mortgages into mortgage-based securities for purposes of selling in the secondary mortgage market.[23] Fannie Mae and Freddie Mac, in turn, protect their interest in each mortgage by requiring minimum insurance coverages and settlement on the basis of replacement cost.[24]

Fannie Mae does not accept a property insurance policy that limits or excludes coverage, in whole or in part, for windstorm, hurricane, hail damages, or any other perils that normally are included under an extended coverage endorsement.[25] The borrower may not obtain a property insurance policy that includes such limitation or exclusion unless the borrower is able to obtain a separate policy or endorsement from another insurer that provides adequate coverage for the limited or excluded peril, or from an insurance pool that the state has established to cover the limitation or exclusions.[26] For first-lien residential mortgages, Fannie Mae requires coverage equal to the lesser of the following:

- 100 percent of the insurable value of the improvements, as established by the property insurer; or
- The unpaid principal balance of the mortgage, as long as it at least equals the minimum amount (80 percent of the insurable value of the improvements) required to compensate for damage or loss on a replacement cost basis.[27]

Freddie Mac does not accept a property insurance policy that excludes coverage for loss or damage from fire, lightning, and other perils, including windstorm, hail, explosion, riot, civil commotion, damage by aircraft, damage by vehicles, and damage by smoke, covered within the scope standard extended coverage.[28] The borrower may not obtain a property insurance policy that includes such exclusion unless the borrower is able to obtain a separate policy or endorsement from another insurer that provides adequate coverage for the limited or excluded

[23] Federal House Finance Agency, *About Fannie Mae and Freddie Mac*, https://www.fhfa.gov/about-fannie-mae-freddie-mac (last visited Jan. 28, 2022).
[24] Fannie Mae, *Selling Guide: Fannie Mae Single Family* (Dec. 15, 2021), https://singlefamily.fanniemae.com/media/30286/display#page=905 (last visited Jan. 28, 2022); Freddie Mac, *Minimum Property Insurance Types and Amounts* (November 4, 2020), https://guide.freddiemac.com/app/guide/section/4703.2 (last visited Jan. 28, 2022).
[25] *See* Fannie Mae, *Selling Guide: Fannie Mae Single Family* (Dec. 15, 2021), https://singlefamily.fanniemae.com/media/30286/display#page=905 (last visited Jan. 28, 2022); Extended coverage must include, at minimum, wind, hurricane, civil commotion (including riots), smoke, hail, and damages caused by aircraft, vehicle, or explosion. Typhoon coverage is required for security properties located in Guam.
[26] *Id.*
[27] *Id.*
[28] Freddie Mac, *Minimum Property Insurance Types and Amounts* (Nov. 4, 2020), https://guide.freddiemac.com/app/guide/section/4703.2 (last visited Jan. 28, 2022).

peril, or from an insurance pool the state has established to cover the limitation or exclusions.[29] For one-to-four unit residential properties, Freddie Mac requires coverage at least equal to the higher of the following, not to exceed the replacement cost of the insurable improvements:

- The unpaid principal balance of the mortgage; or
- Eighty percent of the full replacement cost of the insurable improvements.[30]

Valued Policy Law

Florida's Valued Policy Law (VPL)[31] has been in effect since 1899[32] and requires the insurer to set the value of the insured property in the event of a total loss.[33] The VPL originally applied to damages caused by fire and lightning; however, in 1982, the Legislature extended VPL to all covered perils under ch. 82-243, s. 539, L.O.F.[34] In the event of a total loss caused by a covered peril, where the covered peril alone would have caused the loss, an insurer's liability under a property insurance policy equals the total coverage limit for which a premium was paid.[35] However, in the event of total loss caused in part by a covered peril and in part by a noncovered peril, the insurer's liability is limited to the amount of the loss caused by the covered peril.[36]

Florida's VPL currently applies to the total loss of buildings, structures, mobile homes, or manufactured buildings located in Florida and insured as to a covered peril. While it does not differentiate between residential and commercial property, it does not cover policies issued by surplus lines insurers.

Notice of Intent to Litigate Property Insurance Claims

Section 627.70152, F.S., specifies that a claimant must provide the Department of Financial Services (DFS) with written notice of intent to initiate litigation on a form provided by the DFS. Notice is a condition precedent to filing suit. The notice must be given at least 10 business days before filing suit under the policy, but may not be made before the insurer has made a coverage determination under s. 627.70131, F.S., The notice must specify certain information. The DFS forwards the notice to the insurer through electronic mail. A court must dismiss without prejudice any claimant's suit related to a claim for which such notice was not provided.

Citizens Property Insurance Corporation—Overview

Citizens Property Insurance Corporation (Citizens or corporation) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance

[29] *Id.*
[30] *Id*.
[31] Section 627.702, F.S.
[32] *Florida Farm Bureau Cas. Ins. Co. v. Cox*, 967 So. 2d 815, 818 (Fla. 2007).
[33] *Id.*
[34] *Id*. The Legislature amended the VPL in 2005 after *Mierzwa v Florida Windstorm Underwriting Ass'n*, 877 So.2d 774 (Fla. 4th DCA 2004) was released, "expressly providing that "when a loss was caused in part by a covered peril and in part by a noncovered peril, paragraph (a) does not apply. In such circumstances, the insurer's liability under this section shall be limited to the amount of the loss caused by the covered peril. See s. 627.702(1)(b), F.S. (2005)."
[35] Section 627.702(1)(a), F.S.
[36] Section 627.702(1)(b), F.S.

coverage to those unable to find affordable coverage in the voluntary admitted market.[37] Citizens is not a private insurance company.[38] Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA).

Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight member Board of Governors (board) that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission.[39] The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the board.[40] Citizens is subject to regulation by the Florida Office of Insurance Regulation (OIR).

Citizens has three different accounts through which it offers property insurance: a personal lines account, a commercial lines account, and a coastal account.

Citizens' Accounts

The Personal Lines Account (PLA) offers personal lines residential policies that provide comprehensive, multi-peril coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners, mobile home owners, dwellings, tenants, and condominium unit owner's policies.[41]

The Commercial Lines Account (CLA) offers commercial lines residential and non-residential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial non-residential policies covering business properties.[42]

The Coastal Account offers personal residential, commercial residential, and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multi-peril policies.[43]

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[37] Admitted market means insurance companies licensed to transact insurance in Florida.
[38] Section 627.351(6)(a)1., F.S.
[39] Section 627.351(6)(a)2., F.S.
[40] Section 627.351(6)(c)4.a., F.S.
[41] *See* s. 627.351(6)(b)2.a., F.S., and *Account History and Characteristics*, Citizens Property Insurance Corporation, https://www.citizensfla.com/documents/20702/1183352/20160315+05A+Citizens+Account+History.pdf/31f51358-7105-40e9-aa75-597f51a99563 (March 2016) (last visited Jan. 22, 2022).
[42] *Id.*
[43] *Id.*

The Citizens policyholder eligibility clearinghouse program was established by the Legislature in 2013.[44] Under the program, new and renewal policies for Citizens are placed into the clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens.[45]

Current Policies

As of December 31, 2021, Citizens reports 759,305 policies in-force with a total exposure of $232,502,323,529.[46] The chart below outlines Citizens account and product type, number of policies in-force, total exposure and premium with surcharges.

Account	Product Line	Policies In-Force	Total Exposure	Premium with Surcharges
PLA	Personal Residential Multiperil (PR-M)	589,028	167,886,789,888	1,280,496,248
Coastal	Personal Residential Multiperil (PR-M)	98,105	23,245,226,192	278,331,349
Coastal	Personal Residential Wind-Only (PR-W)	67,342	28,784,726,623	178,916,825
Coastal	Commercial Residential Multiperil (CR-M)	111	592,392,383	2,789,952
Coastal	Commercial Residential Wind-Only (CR-W)	1,749	5,682,636,307	33,449,678
Coastal	Commercial Non-Residential Multiperil (CNR-M)	39	48,588,500	569,765
Coastal	Commercial Non-Residential Wind-Only (CNR-W)	2,212	1,837,291,826	23,692,614
CLA	Commercial Residential Multiperil (CR-M)	580	4,289,395,010	17,091,136
CLA	Commercial Non-Residential Multiperil (CNR-M)	139	135,276,800	879,248
	Total	759,305	232,502,323,529	1,816,216,815

Source: Citizens Property Insurance[47]

These numbers do not reflect policies tagged for takeout via Citizens' depopulation program but still serviced by Citizens.[48] From December, 2020 to December, 2021, Citizens' policy count

[44] Section 10, ch. 2013-60, L.O.F.
[45] Section 627.3518(2)-(3), F.S.
[46] Citizens Property Insurance, *About Us, Snapshot, December 31, 2021*, https://www.citizensfla.com/-/20211231-policies-in-force (last visited Jan. 22, 2022).
[47] *Id.* This table does not include policies tagged for takeout via the Depopulation Program but still serviced by Citizens.
[48] *Id.*

grew by nearly 40 percent, adding 216,566 total policies in force.[49] Citizens has expressed it expects to exceed one million policies in force in 2022.[50]

Citizens Glidepath Rates

From 2007 until 2010, Citizens' rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a "glidepath" to impose annual rate increases up to a level that is actuarially sound. Under the original established glidepath, Citizens had to implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges. In 2021, the Legislature revised this glidepath to increase it one percent per year to 15 percent, as follows: [51]

- 11 percent for 2022.
- 12 percent for 2023.
- 13 percent for 2024.
- 14 percent for 2025.
- 15 percent for 2026 and all subsequent years.

The implementation of this increase ceases when Citizens has achieved actuarially sound rates.[52] In addition to the overall glidepath rate increase, Citizens can increase its rates to recover the additional reimbursement premium it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the Florida Hurricane Catastrophe Fund coverage, pursuant to s. 215.555(5)(b), F.S.[53]

Citizens Financial Resources

Citizens' financial resources include insurance premiums, investment income, and operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private reinsurance, policyholder surcharges, and regular and emergency assessments. Non-weather water losses, reinsurance costs and litigation are currently the major determinants of insurance rates.[54] In the event of a catastrophic storm or series of smaller storms, reserves could be exhausted, leaving Citizens unable to pay all claims.[55] Under Florida law, if the Citizens' Board of Directors determines a Citizens' account has a projected deficit, Citizens is authorized to levy

[49] Citizens Property Insurance Corporation, *Policies in Force*, https://www.citizensfla.com/policies-in-force (last visited Jan. 22, 2022).
[50] Citizens Property Insurance Corporation, *Press Release: Citizens Board approves 2022 rate recommendations* (December 15, 2021), *available at* https://www.citizensfla.com/-/20211215-citizens-board-approves-2022-rate-recommendations.
[51] Section 627.351(6)(n)5., F.S.
[52] Section 627.351(6)(n)7., F.S.
[53] Section 627.351(6)(n)6., F.S.
[54] Citizens Property Insurance Corporation, *2022 Rate Kit, Citizens 2021 Rates, Frequently Asked Questions*, https://www.citizensfla.com/documents/20702/15725518/20211213+2022+Rate+Kit.pdf/328181e5-1c41-a28d-76ea-b7d911462c6a?t=1639433573548 (last visited Jan. 22, 2022).
[55] Citizens Property Insurance Corporation, *Insurance/Insurance 101/Assessments*, https://www.citizensfla.com/assessments (last visited Jan. 22, 2022).

assessments[56] on its policyholders and on each line of property and casualty line of business other than workers' compensation insurance and medical malpractice insurance.[57] Citizens may impose three assessment tiers and their sequence is as follows:[58]

Citizens Policyholder Surcharge – A surcharge of up to 15 percent of premium on all Citizens' policies, collected upon issuance or renewal. This 15 percent assessment can be levied for each of the three Citizens' accounts—the CLA, the PLA, and the Coastal Account— that project a deficit. Thus, the total maximum premium surcharge a policyholder could be assessed is 45 percent.[59]

Regular Assessment – If the Citizens' surcharge is insufficient to cure the deficit for the coastal account, Citizens can require an assessment against all other insurers except medical malpractice and workers' compensation. The assessment may be recouped from policyholders through a rate filing process of up to two percent of premium or two percent of the deficit, whichever is greater.[60] This assessment is not levied against Citizens' policyholders.
Emergency Assessment – Requires any remaining deficit for Citizens' three accounts be funded by multi-year emergency assessments on all insurance policyholders (except medical malpractice and workers' compensation), including Citizens' policyholders. This assessment may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.[61]

Eligibility for Insurance in Citizens

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for insurance in Citizens and provides specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens has additional eligibility requirements set out in their underwriting rules. These rules are approved by the OIR and are set out in Citizens' underwriting manuals.[62]

Eligibility Based on Premium Amount

An applicant for residential insurance cannot buy insurance in Citizens if an authorized insurer in the private market offers the applicant insurance for a premium that does not exceed the Citizens

[56] Assessments are charges that Citizens and non-Citizens policyholders can be required to pay, in addition to their regular policy premiums.
[57] Accident and health insurance and policies written under the National Flood Insurance Program or the Federal Crop Insurance Program are not assessable types of property and casualty insurance. Surplus lines insurers are not assessable, but their policyholders are. Section 627.351.(6)(b)3.f.-h., F.S.
[58] Citizens Property Insurance Corporation, *supra* note 55.
[59] Sections 627.351.(6)(b)3.i.(I) and 627.351.(6)(c)21., F.S. *See also*, Citizens Property Insurance Corporation, *supra* note 55.
[60] Section 627.351.(6)(b)3.a., F.S.
[61] Section 627.351(6)(b)3.d., F.S.
[62] *See* Citizens Property Insurance Corporation *Revised Underwriting Manuals*, https://www.citizensfla.com/-/20160329-revised-underwriting-manuals (last visited Jan. 22, 2022).

premium by 20 percent or more. [63] In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage.

A residential policyholder cannot renew insurance in Citizens if an authorized insurer offers to insure the property at a premium equal to or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the eligibility requirement for renewal premium to apply.[64]

Eligibility Based on Value of Property Insured

In addition to the eligibility restrictions based on premium amount, current law provides eligibility restrictions for homes and condominium units based on the value of the property insured.[65] Structures with a dwelling replacement cost of $700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, are not eligible for coverage with Citizens.[66] However, Citizens is allowed to insure structures with a dwelling replacement cost or a condominium unit with a dwelling and contents replacement cost of one million dollars or less in Miami-Dade and Monroe counties, after the OIR determined these counties to be non-competitive.[67]

Citizens Depopulation

Florida law requires Citizens to create programs to help return Citizens policies to the private market and reduce the risk of additional assessments for all Floridians.[68] In 2016, the Legislature passed requirements that Citizens, by January 1, 2017, amend its operations relating to takeout agreements.[69] As part of these updated requirements, codified under s. 627.351(6)(ii), F.S., a policy may not be taken out of Citizens unless Citizens:

- Publishes a periodic schedule of cycles during which an insurer may identify, and notify Citizens of, policies the insurer is requesting to take out;[70]
- Maintains and makes available to the agent of record a consolidated list of all insurers requesting to take-out a policy; such list must include a description of the coverage offered and the estimated premium for each take-out request; and
- Provides written notice to the policyholder and the agent of record regarding all insurers requesting to take-out the policy and regarding the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with the corporation. The notice must be in a format prescribed by the corporation and include, for each take-out offer:
  - The amount of the estimated premium;

[63] Section 627.351(6)(c)5., F.S.
[64] Section 627.351(6)(c)5., F.S.
[65] Section 627.351(6)(a)3., F.S.
[66] Section 627.351(6)(a)3.d., F.S.
[67] Office of Insurance Regulation, Final Order Case No: 165625-14 (Dec. 22, 2014), a*vailable at* https://www.floir.com/siteDocuments/Citizens165625-14-O.pdf) (last visited Jan. 22, 2022). *See also* Section 627.351(6)(a)3.d., F.S., and Citizens Property Insurance Corporation, *Update to Maximum Coverage Limits, November 12, 2019* https://www.citizensfla.com/-/2019-roof-permits-acceptable-for-fbc-credits.
[68] Section 627.351(6)(q)3.a., F.S.
[69] Chapter 2016-229, L.O.F.
[70] Such requests from insurers must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.

- A description of the coverage; and
- A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

Access to Public Records – Generally

The Florida Constitution provides the public has the right to inspect or copy records made or received in connection with official governmental business.[71] 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.[72]

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 ss. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the Legislature.[73] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[74] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Confidentiality of Citizens' Underwriting and Claims Files

Section 627.351(1)(x), F.S., establishes certain records of Citizens are confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. Pursuant to sub-sub-paragraphs 1.a.-b., these exempt records include:

- Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files; and
- Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law.

Sub-sub-paragraphs 1.a.-b. also provide that such records may be released to other governmental agencies upon written request and demonstration of need. Records so released and held by the receiving agency would remain confidential and exempt.

The public records exemption authorizes the sharing of certain files and information for the purpose of depopulating Citizens. If an authorized insurer is considering underwriting a risk insured by Citizens, relevant underwriting files and confidential claims files may be released to the insurer if the insurer agrees in a sworn writing to maintain the confidentiality of the files.

[71] FLA. CONST. art. I, s. 24(a).
[72] *Id*.
[73] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022), https://www.flsenate.gov/UserContent/Publications/SenateRules/2020-2022_Rules.pdf and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022), and https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Reference&CommitteeId=&Session=2022&DocumentType=The+Rules+Of+The+House+of+Representatives&FileName=2020-2022+House+Rules+-++Edition+1.pdf (last visited Jan. 22, 2022).
[74] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

Citizens may also release such files to the staff and board of governors of the market assistance plan established by s. 627.3515, F.S., who also must maintain confidentiality, and may share such files with authorized insurers considering writing those risks if the authorized insurer agrees to maintain confidentiality. Citizens may also release the name, address, and phone number of a residential property owner or insured, the location of the risk, rating information, loss history, and policy type to an entity that has obtained a permit to become an authorized insurer, a reinsurer under s. 624.610, F.S., a licensed reinsurance broker, a licensed rating organization, a modeling company, or a licensed general lines agent. The recipient of such information must maintain confidentiality.

Insurer Insolvency

Federal law specifies insurance companies cannot file for bankruptcy and are instead subject to state laws regarding receivership.[75] Insurers are either "rehabilitated" or "liquidated" by the state. Typically, insurers are put into liquidation when the company is or is about to become insolvent;[76] whereas, insurers are placed in rehabilitation[77] for numerous reasons, one of which is the insurer is impaired or failed to comply with an order of the OIR to address an impairment of capital or surplus or both. The goal of rehabilitation is to return to solvency. The goal of liquidation, however, is to liquidate the business of the insurer and use the proceeds to pay off the company's debts and outstanding insurance claims.

In Florida, the Division of Rehabilitation and Liquidation of the DFS is responsible for rehabilitating or liquidating insurance companies. This process involves the initiation of a delinquency proceeding[78] and the placement of an insurer under the control of the DFS as the receiver. The DFS, as receiver, has many responsibilities related to outstanding debts and insurance claims, which include collecting all debts and money due to the insurer for the good of policyholders and creditors alike, evaluating and paying claims with available assets, and assisting in the transition of policyholders to other insurance coverage.[79]

If an insurer is placed under liquidation, Citizens may, if ordered by a court of competent jurisdiction, assume policies or otherwise provide coverage for policyholders of said insurer under such forms, rates, terms, and conditions as the corporation deems appropriate. Such forms, rates, terms, and conditions are subject to approval by the OIR.

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[75] The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. § 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. *See* 15 U.S.C. § 1012 (McCarran-Ferguson Act).
[76] Section 631.061, F.S.
[77] Section 631.051, F.S.
[78] Section 631.031, F.S.
[79] Florida Department of Financial Services, *Overview of Liquidation under Chapter 631, Florida Statutes,* https://www.myfloridacfo.com/division/receiver/guide-to-the-receivership-process/liquidationsummary (last visited December 29, 2021).

III. Effect of Proposed Changes:

Prohibition against Contractor Solicitations to Make Insurance Claims for Roof Damage

Section 1 amends s. 489.147(1)(a), F.S., to revise the definition of a prohibited advertisement, which current law prohibits. The term is currently defined as any written or electronic communication by a contractor which encourages, instructs, or induces a consumer to contact a contractor or public adjuster, for making an insurance claim for roof damage. The bill revises the definition by providing a prohibited advertisement means any such written or electronic communication that does not include the following disclosures:

- The consumer is responsible for payment of any insurance deductible;
- It is insurance fraud punishable as a felony of the third degree for a contractor to pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to property covered by a property insurance policy; and
- It is insurance fraud punishable as a felony of the third degree to intentionally file an insurance claim containing any false, incomplete or misleading information.

The disclosures must be stated in a font size that is at least 12 points and at least half a large as the largest font used in the solicitation.

With this change, contractors will no longer be prohibited from making such solicitations so long as the solicitation includes the aforementioned disclosures.

Scope (As it Applies to Property, Casualty and Surety Insurances)

Section 2 amends s. 627.021, F.S., to specify that though the Rating Law (Part I of ch. 627, F.S.) does not apply to surplus lines insurance placed under ss. 626.913 – 626, it may be specifically stated to apply to such insurance. The revision is necessitated by the provision allowing surplus lines insurers that meet certain requirements to participate in Citizens Property Insurance Corporation (Citizens or corporation) take-out programs.

Citizens Property Insurance Corporation

Section 3 amends s. 627.351(6), F.S., regarding Citizens, the governmental entity that provides residential and commercial property insurance to applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market.

Eligibility for Citizens Coverage – Determining Replacement Cost

The bill amends s. 627.351(6)(a), F.S., to require that Citizens use a method for valuing dwelling replacement cost, which is approved by the Office of Insurance Regulation (OIR), when enforcing the requirement that structures and single condominium units with a replacement cost above the statutory threshold are ineligible for Citizens. Currently, structures and single condominium units with a replacement cost above $700,000 are ineligible for Citizens coverage unless the dwelling or single condominium unit is located in a county where the OIR has determined there is not a reasonable degree of competition. In a county where there is not a reasonable degree of competition, which is currently Miami-Dade County and Monroe County,

structures and single condominium units are ineligible for Citizens if the replacement cost is one million dollars or more.

The bill also deletes unnecessary language related to Citizens eligibility that ceased to be effective on January 1, 2017.

Combining Citizens Accounts

The bill amends s. 627.351(6)(b)2.b., F.S., to require that Citizens combine its three accounts (personal lines, coastal, and commercial) into a single account once financing obligations based on the three account structure are no longer outstanding. The Legislature will need to further revise the Citizens statute in a future session in order for this to occur because the statute currently requires the three account structure and bases Citizens assessment authority on that structure.

Governance of Citizens – Qualifications to Serve on the Board of Governors or as Executive Director

The bill amends s. 627.351(6)(c)4., F.S., to increase the insurance expertise required of certain appointed members of the Citizens Board of Governors (board) at the time of appointment or reappointment. On or after July 1, 2022, an appointee designated as chair must have demonstrated expertise in insurance or must have at least one year of experience serving on the board. The executive director of Citizens is required, at the time of appointment, to have must have the qualifications necessary to serve in that role for an insurer that has a certificate of authority to transact insurance in Florida.

Under current law, at least one of the two members of the board appointed by each appointing officer[80] must have "demonstrated expertise in insurance." The bill specifies the demonstrated expertise in insurance must be at least 10 years' experience with property and casualty insurance as a full-time employee, officer, or owner of a licensed insurance agency, an insurer authorized to transact property insurance in Florida, an insurance regulator or as an executive director or officer of an insurance trade association.

The bill also specifies the executive director of Citizens must, at the time of appointment, have the experience, character, and qualification required under s. 624.404(3), F.S., to serve as the chief executive officer of an insurer.

Section 624.404(3), F.S., contains a number of requirements a person must meet to be the chief executive officer of an authorized insurer in Florida. The statute prohibits the OIR from authorizing an insurer to transact insurance in Florida if the management, officers, or directors are found by the OIR to be:

- Incompetent or untrustworthy;
- So lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance buying public;
- So lacking in insurance experience, ability, and standing as to jeopardize the reasonable promise of success operation; or

[80] The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House.

- A person the OIR has good reason to believe is affiliated directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders or stockholders, or investors, or creditors or of the public, by manipulation of assets, accounts, or reinsurance or by bad faith.

The OIR is also prohibited by s. 624.404(3), F.S., from authorizing an insurer who exercises or has the ability to exercise control, or who influences or has the ability to influence the transaction of the business of the insurer, does not possess the financial standing and business experience for the successful operation of the insurer.

Under s. 624.404(3), F.S., an authorized insurer must immediately remove a person who exercises, or has the ability to exercise, effective control of an insurer if such person:
- Has been found guilty of, or has pleaded guilty or nolo contendere to, any felony or crime punishable by imprisonment of one year or more of any state or country; or
- Was in the past affiliated directly or indirectly, through ownership interest of 10 percent or more, control, or reinsurance transactions, with any business, corporation, or entity that has been found guilty of or plead nolo contendere to any felony or crime punishable by imprisonment for one year or more under the laws of any state or country.

Under the bill, the executive director of Citizens would have be required to meet these requirements.

Eligibility for Citizens Coverage

The bill amends s. 627.351(6)(c)5., F.S., to increase the likelihood that a current Citizens policyholder with a personal lines or commercial lines residential policy will be made ineligible for Citizens by receiving an offer of coverage from an authorized insurer at renewal. Specifically, the bill provides whenever such an offer is received by a Citizens policyholder, the risk is not eligible for Citizens coverage unless the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from Citizens. Thus, a current Citizens policyholder may not renew Citizens coverage if the policyholder receives an offer of comparable coverage at renewal from an authorized insurer at a premium that is not more than 20 percent higher than the Citizens renewal premium. This matches the current standard that applies to new applicants for Citizens coverage.

The bill increases the eligibility threshold for new applicants for Citizens commercial lines residential policies (such as condominium association policies) by increasing the threshold that a private market offer of coverage must exceed to allow a risk receiving such offer to remain eligible for Citizens coverage. The threshold is increased from 15 percent above the Citizens premium to 20 percent above the Citizens premium.

The bill makes a conforming change to revise a notice requirement in s. 627.351(6)(ii), F.S., that applies to certain Citizens depopulation programs.

Furthermore, **Section 4** of the bill amends s. 627.3518(5), F.S., to apply the revised eligibility criteria to policies in the Citizens clearinghouse.

Rates for Citizens Coverage – Narrowing the Scope of Application of the Citizens Glidepath

The bill amends s. 627.351(6)(n), F.S., which sets for the standards for Citizens rates. The bill limits the application of the Citizens "glidepath" to personal lines residential policies covering an insured's *primary residence* and any commercial lines residential policy. "Glidepath" is the term commonly used to refer to the statutory limitation on rate increases that may be imposed on an individual Citizens policyholder. The maximum rate increase that may be imposed on any single policy, excluding coverage changes and surcharges, is 11 percent for 2022.[81] This limit on rate increases is notwithstanding the requirement that rates for Citizens coverage must be actuarially sound and are subject to the standards of s. 627.062, F.S., of the Rating Law.

The bill defines a primary residence as the dwelling an insured has represented as their permanent home on the insurance application or otherwise to the corporation. Thus, going forward, a personal lines residential policy that does not cover a primary residence (for instance, a second home) will have to pay an actuarially sound rate. The fiscal impact of this change on policyholders and the corporation is examined in **Section V, Fiscal Impact Statement** below.

Rates for Citizens Coverage – Personal Lines Residential Policies Assumed From an Unsound Insurer

The bill also provides that any new personal lines residential policy written by Citizens that has an effective date on or after January 1, 2023, which covers a risk for which the immediately preceding policy was written by an unsound insurer, must be charged a premium for Citizens coverage that is the higher of:

- The Citizens premium; or
- The premium that was charged by the unsound insurer.

The term "unsound insurer" as used in this provision means an insurer determined by the OIR to be in unsound condition or an insurer placed in receivership.

Participation of Surplus Lines Insurers in Citizens Depopulation Programs

The bill revises s. 627.351(6)(q)3.d., F.S., to allow eligible surplus lines insurers to participate in any Citizens' depopulation, take-out, or keep-out plan in the same manner and terms as an authorized insurer if Citizens' policy count more than 700,000 within the 30 days before the time a takeout offer is made by a surplus lines insurer. To be eligible for participation in a particular program, a surplus lines insurer must follow all Citizens' requirements relating to the plan that would be applicable to admitted insurers, follow statutory requirements applicable to the removal of policies from Citizens, and obtain approval from the OIR. In considering a surplus lines insurer's request for approval, the OIR must ensure the insurer:

- Maintains surplus of $50 million on a company or pooled basis;
- Has a superior, excellent, exceptional, or equally comparable financial strength rating by a rating agency acceptable to the OIR;
- Maintains reserves, surplus, reinsurance, and reinsurance equivalents sufficient to cover its 100-year probable maximum hurricane loss at least twice in a single hurricane season;[82]

[81] The maximum rate increase will increase by one percent for each subsequent year until it reaches 15 percent for 2026.
[82] The insurer also must submit such reinsurance to the OIR for review.

- Provides prominent notice to the policyholder that surplus lines policies are not provided coverage by the Florida Insurance Guaranty Association (FIGA) and outlines any substantial policy differences between the existing Citizens' policy and the policy the insurer is offering; and
- Provides policy coverage similar to that provided by Citizens.

The surplus lines insurer also must file the following with the OIR:

- Information requested by the OIR to demonstrate compliance with s. 624.404(3), F.S., regarding basic qualifications to transact insurance in Florida;[83]
- A service-of-process consent and agreement form executed by the insurer;
- Proof that the insurer has been an eligible or authorized insurer for at least three years;
- A duly authenticated copy of the insurer's current audited financial statement;[84]
- A certified copy of the insurer's most recent official financial statement required by the insurer's domiciliary state (this is only required if the authenticated copy provided above differs from what the insurer provided to their domiciliary state); and
- A copy of the United States trust account agreement, if applicable.

Participation in these plans would not make a surplus line insurer subject to additional requirements under ch. 626, F.S., except that which is already required under part VIII. Policies taken out are not subject to the exporting requirements provided in s. 626.916(1)(a)-(c), and (e), F.S.

After assuming policies under these plans, a surplus lines insurer would be required to remit a special deposit equal to the unearned premium net of unearned commissions on the assumed block of business to the Bureau of Collateral Management within the Department of Financial Services (DFS). The insurer would also need to submit to the OIR an accounting of the policies assumed and the amount of unearned premium for such policies and a sworn affidavit attesting to its accuracy by an officer of the surplus lines insurer. Subsequently, each quarter, the surplus lines insurer must update the OIR with the unearned premium in force for the previous quarter on policies assumed from the corporation, and must submit additional funds with that filing if the special deposit is insufficient to cover the unearned premium on assumed policies. The purpose of the special deposit is to allow the DFS, in the event of liquidation of the surplus lines insurer, to pay unearned premium or policy claims, return all or part of the deposit to the domiciliary receiver, or use the funds in accordance with any action authorized under part I of ch. 631, F.S., or in compliance with any order of a court having jurisdiction over the insurer's insolvency.

A surplus lines broker representing a surplus lines insurer must obtain confirmation, in advance, from the producing agent that the agent is willing to participate in the take-out plan with the surplus lines insurer. Also, authorized insurers are to be given priority over surplus lines insurers if both select a particular policy for removal.

[83] This may include biographical affidavits, fingerprints processed pursuant to s. 624.34, F.S., and the results of criminal history records checks for officers and directors of the insurer and its parent or holding company.
[84] The statement must be in English, expressing all monetary values in United States dollars, at an exchange rate then current and shown in the statement, in the case of statements originally made in the currencies of other countries, and including any additional information relative to the insurer as the OIR may request.

The surplus lines insurer participation provision also states if a policyholder has a dwelling replacement cost of $700,000 or more or if a single condominium unit has a combined dwelling and contents replacement cost of $700,000 or more, the policyholder would no longer qualify for Citizens coverage should the premium offered by the surplus lines insurer is no greater than that offered by Citizens. This provision does not apply to policyholders with a dwelling replacement cost below $700,000 or a single condominium unit with a combined dwelling and contents replacement cost below $700,000. Such policyholders would maintain eligibility for coverage with Citizens regardless of any offer of coverage from a surplus lines insurer.

Underwriting and Confidential Claim Files

The bill revises an existing public records exemption[85] under s. 626.916(1)(x)2., F.S., that allows authorized insurers, considering underwriting a risk held by Citizens, to access underwriting files and confidential claims files that would otherwise be exempt from public records requirements. The bill authorizes reinsurance intermediaries, eligible surplus lines insurers, or entities that have been created to seek authority to write property insurance in this state to also have access to such underwriting files and confidential claims. The bill also revises activities that would allow such parties, including authorized insurers, to receive this information. In particular, relevant information from both the underwriting files and confidential claim files may be released to the parties seeking to underwrite or assist in underwriting a risk.

Citizens Clearinghouse

Section 4 of the bill amends s. 627.3518(5), F.S., to apply the revised eligibility criteria to policies in the Citizens clearinghouse. Accordingly, if an offer of coverage from an authorized insurer is received by a Citizens policyholder through the clearinghouse, the risk is not eligible for Citizens coverage *unless* the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from Citizens.

Roof Deductible

Section 5 amends s. 627.701, F.S., to allow property insurers to require a separate roof deductible as condition of eligibility or renewal of a residential property insurance policy, if all of the following conditions are met:

- The roof deductible may not exceed two percent of the policy's dwelling coverage limit.
- The premium for such coverage includes an actuarially sound premium discount or credit for the impact of the roof deductible.
- If the roof deductible is added to the policy at renewal, the insurer must provide a notice of change in policy terms pursuant to s. 627.43141, F.S.
- The roof deductible does not apply to:
  - A total loss to a primary structure in accordance with the valued policy law under s. 627.702, F.S., which is caused by a covered peril.
  - A roof loss caused by a hurricane as defined by s. 627.4025(2), F.S.
  - A roof loss that can be repaired without replacement of the roof.

[85] Public records, unless expressly stated to be confidential and exempt, are subject to s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution.

- If a roof deductible is applied, no other policy deductible may be applied to the loss. If, however, a roof deductible is not applied, the all-other-perils deductible or the hurricane deductible may be applied.

The bill specifies that a roof deductible provision may only be included in an insurance policy if the OIR determines the deductible provisions of the policy are clear and unambiguous.

The bill also requires that any personal lines residential property insurance policy that contains a separate roof deductible must include the following disclosure in at least 18-point, boldfaced type:

> THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR ROOF LOSSES WHICH MAY RSULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU.

The policy must also prominently display the actual dollar value of the roof deductible on the policy declarations page at issuance, and for renewal, on the renewal declarations page or the premium renewal notice.

Section 6 amends s. 627.7011(3)(a), F.S., to allow residential property insurers that utilize a roof deductible to provide only actual cash value reimbursement on a roof loss until the insurer receives reasonable proof of payment by the policyholder of the roof deductible. The bill defines "reasonable proof of payment" to include a canceled check, money order receipt, credit card statement, or copy of an executed installment plan contract or other financing arrangement that requires full payment of the deductible over time.

Attorney Fees

Section 7 amends s. 627.70152, F.S., to allow a defendant to receive reasonable fees and costs if a claimant's suit against the defendant is dismissed for failure to submit a notice of intent to litigate.

Other Bill Sections

Sections 8, 9, and 10 of the bill reenact certain sections of the Florida Statutes to incorporate the amendments made by this bill.

Section 11 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:

Section 1 of the bill revises the currently existing prohibition against contractors making prohibited advertisements related to insurance claims for roof damage. Under the bill, such communications are not prohibited if certain disclosures regarding insurance fraud and property insurance deductibles are included in the advertisement. Background on United States Supreme Court cases relevant to this topic is included on pages 4 through 6 of this Staff Analysis.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill limits application of the Citizens glidepath on rates, which is the statutory provision that provides that no single residential policy insured by Citizens may incur an annual rate increase above a certain threshold – 11 percent in 2022, exclusive of coverage changes and surcharges. Under the bill, the glidepath is applied to only primary residences. Thus, Citizens will charge a premium based on an actuarially sound rate to non-primary residences (such as second homes). According to the most recent Citizens rate filing, the statewide average actuarially indicated rate for personal lines policies would require an average rate increase of 34.9 percent.[86] Application of the glidepath limit resulted in Citizens proposing an average rate increase of 8.6 percent for 2022.[87] Under the bill, an additional rate increase averaging 26.3 percent would be imposed on a non-primary residences.

Insureds that purchase policies with a separate roof deductible will receive a premium discount related to the deductible, but will have increased personal financial responsibility for a roof replacement to which the deductible applies.

[86] Citizens Property Insurance Corporation, *2022 Rate Kit*, pg. 6 (Dec. 13, 2021). https://www.citizensfla.com/documents/20702/15725518/20211213+2022+Rate+Kit.pdf/328181e5-1c41-a28d-76ea-b7d911462c6a?t=1639433573548 (last visited Jan. 29, 2022).
[87] See *id*.

C. Government Sector Impact:

The provisions of the bill intended to depopulate Citizens – making all applicants for new Citizens residential coverage and current Citizens residential policyholders ineligible for Citizens coverage upon receiving an offer from an authorized insurer unless the premium is more than 20 percent higher than the Citizens premium, and limiting application of the Citizens glidepath – will result in Citizens having a lower number of policies and collecting more premium from some policyholders. To the extent that the bill reduces Citizens policy count or slows the growth of the policy count, it will reduce the likelihood of Citizens running a deficit and having to impose surcharges and assessments on policyholders.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 489.147, 627.021, 627.351, 627.3518, 627.701, 627.7011, and 627.70152.

The bill re-enacts the following sections of the Florida Statutes: 624.424(10), 627.3571, and 627.712(1).

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 Appropriations on February 28, 2022:
The committee substitute:

- Requires certain appointed members of the Citizens Board of Governors (board) to have demonstrated expertise in insurance at the time of appointment or reappointment.
- Requires on or after July 1, 2022, an appointee designated as chair must have demonstrated expertise in insurance and must have at least one experience serving on the board.
- Revises the term "demonstrated expertise in insurance" to mean at least ten years' experience:
  - In property and casualty insurance as a full time employee, officer, or owner of a licensed insurance agency or an insurer authorized to transact property insurance in this state; or
  - As an insurer regulator or as an executive or officer of an insurance trade association.

- Removes a provision that allows insurers to provide homeowner's insurance roof coverage solely on the basis of actual cash value (ACV) or a stated limit of coverage;
- Allows insurers to require a separate roof deductible; however, the deductible cannot exceed two percent of the policy's dwelling unit;
- Provides a roof deductible does not apply in the event of:
  - Total loss to the insured property;
  - A roof loss caused by a hurricane; and
  - A roof than can be repaired instead of entirely replaced.
- Allows insurers to limit roof reimbursement to actual cash value until the policyholder provides proof of paying the roof deductible;
- Requires Citizens Property Insurance Corporation (Citizens) to merge its three accounts [coastal, residential, and commercial] once financial obligations are met;
- Requires that policies assumed by Citizens from an unsound insurer must pay the higher of the Citizens premium or the premium that was charged by the unsound insurer;
- Allows surplus lines to participate in the Citizens take-out program;
- Provides limited access to files for additional parties seeking to take policies out of Citizens; and
- Allows a defendant to receive reasonable attorney fees and costs if a claimant's suit against the defendant is dismissed for failure to submit a notice of intent to litigate.

CS by Banking and Insurance on February 2, 2022:
The committee substitute:

- Removes the provisions related to Surplus Lines and public records exemptions in s. 627.351, F.S, of the underlying bill; and
- Makes a technical change restoring current law related to Citizens' polices removed from the corporation through an assumption agreement.

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

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A bill to be entitled

An act relating to property insurance; amending s. 489.147, F.S.; revising the definition of the term "prohibited advertisement"; amending s. 627.351, F.S.; deleting obsolete provisions related to eligibility thresholds for personal lines residential coverage with the Citizens Property Insurance Corporation; requiring the corporation to use a method for valuing dwelling replacement costs which is approved by the Office of Insurance Regulation; specifying qualifications requirements for certain members of the board of governors for the corporation; revising conditions for eligibility for coverage with the corporation; providing for a required limited annual rate increase for specified polices; defining the term "primary residence"; revising the contents of a specified notice provided by the corporation; amending s. 627.3518, F.S.; deleting an obsolete provision related to implementing the clearinghouse program by a specified date; deleting an obsolete reporting requirement; conforming provisions to changes made by the act; amending s. 627.7011, F.S.; providing that certain provisions relating to homeowners' policies do not prohibit insurers from providing limited coverage on personal lines residential property insurance policies by including roof surface type reimbursement schedules; providing requirements for roof surface type reimbursement schedules; authorizing the conversion of a residential property insurance policy

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to a roof surface type reimbursement schedule under certain circumstances; providing that certain provisions relating to homeowners' policies do not prohibit insurers from providing coverage on personal lines residential property insurance policies that limits roof coverage to a stated value sublimit of coverage; providing requirements for stated value sublimits of coverages; providing that certain provisions relating to homeowners' policies do not prohibit certain insurers from offering roof reimbursement on the basis of replacement costs; reenacting ss. 624.424(10), 627.3517, and 627.712(1), F.S., relating to annual insurer statements, consumer choice, and required residential windstorm coverage, respectively, to incorporate the amendments made to s. 627.351, F.S., in references thereto; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 489.147, Florida Statutes, is amended to read:

489.147 Prohibited property insurance practices.—

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

(a) "Prohibited advertisement" means any written or electronic communication by a contractor which ~~that~~ encourages, instructs, or induces a consumer to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage, if such communication does not state in a font size

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of at least 12 points and at least half as large as the largest font size used in the communication that:

1. The consumer is responsible for payment of any insurance deductible;

2. It is insurance fraud punishable as a felony of the third degree for a contractor to pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to property covered by a property insurance policy; and

3. It is insurance fraud punishable as a felony of the third degree to intentionally file an insurance claim containing any false, incomplete, or misleading information.

The term includes, but is not limited to, door hangers, business cards, magnets, flyers, pamphlets, and e-mails.

Section 2. Paragraphs (a), (c), (n), and (ii) of subsection (6) of section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a) The public purpose of this subsection is to ensure that there is an orderly market for property insurance for residents and businesses of this state.

1. The Legislature finds that private insurers are unwilling or unable to provide affordable property insurance coverage in this state to the extent sought and needed. The absence of affordable property insurance threatens the public health, safety, and welfare and likewise threatens the economic health of the state. The state therefore has a compelling public interest and a public purpose to assist in assuring that

property in this ~~the~~ state is insured and that it is insured at affordable rates so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting to the public health, safety, and welfare, to the economy of the state, and to the revenues of the state and local governments which are needed to provide for the public welfare. It is necessary, therefore, to provide affordable property insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends, therefore, that affordable property insurance be provided and that it continue to be provided, as long as necessary, through Citizens Property Insurance Corporation, a government entity that is an integral part of the state, and that is not a private insurance company. To that end, the corporation shall strive to increase the availability of affordable property insurance in this state, while achieving efficiencies and economies, and while providing service to policyholders, applicants, and agents which is no less than the quality generally provided in the voluntary market, for the achievement of the foregoing public purposes. Because it is essential for this government entity to have the maximum financial resources to pay claims following a catastrophic hurricane, it is the intent of the Legislature that the corporation continue to be an integral part of the state and that the income of the corporation be exempt from federal income taxation and that interest on the debt obligations issued by the corporation be exempt from federal income taxation.

2. The Residential Property and Casualty Joint Underwriting

Association originally created by this statute shall be known as the Citizens Property Insurance Corporation. The corporation shall provide insurance for residential and commercial property, for applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market. The corporation shall operate pursuant to a plan of operation approved by order of the Financial Services Commission. The plan is subject to continuous review by the commission. The commission may, by order, withdraw approval of all or part of a plan if the commission determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner, mobile home owner, dwelling, tenant, condominium unit owner, and similar policies; and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment building, and similar policies.

3. With respect to coverage for personal lines residential structures, and~~:~~

~~a. Effective January 1, 2014, a structure that has a dwelling replacement cost of $1 million or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $1 million or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2013, may continue to be covered by the corporation until the end of the policy term. The office shall approve the method used by the corporation for valuing the~~

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~~dwelling replacement cost for the purposes of this subparagraph. If a policyholder is insured by the corporation before being determined to be ineligible pursuant to this subparagraph and such policyholder files a lawsuit challenging the determination, the policyholder may remain insured by the corporation until the conclusion of the litigation.~~

~~b. Effective January 1, 2015, a structure that has a dwelling replacement cost of $900,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $900,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2014, may continue to be covered by the corporation only until the end of the policy term.~~

~~c. Effective January 1, 2016, a structure that has a dwelling replacement cost of $800,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $800,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2015, may continue to be covered by the corporation until the end of the policy term.~~

~~d.~~ effective January 1, 2017, a structure that has a dwelling replacement cost of $700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, is not eligible for coverage by the corporation. The corporation must use a method for valuing the dwelling replacement cost which is approved by the office ~~Such dwellings insured by the corporation on December 31, 2016, may continue to be covered by the corporation until the end of the policy term~~. ~~The requirements of sub-~~

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~~subparagraphs b.-d. do not apply~~ However, in counties where the office determines there is not a reasonable degree of competition, ~~. In such counties~~ a ~~personal lines residential~~ structure that has a dwelling replacement cost of less than $1 million, or a single condominium unit that has a combined dwelling and contents replacement cost of less than $1 million, is eligible for coverage by the corporation.

4. It is the intent of the Legislature that policyholders, applicants, and agents of the corporation receive service and treatment of the highest possible level but never less than that generally provided in the voluntary market. It is also intended that the corporation be held to service standards no less than those applied to insurers in the voluntary market by the office with respect to responsiveness, timeliness, customer courtesy, and overall dealings with policyholders, applicants, or agents of the corporation.

5.a. Effective January 1, 2009, a personal lines residential structure that is located in the "wind-borne debris region," as defined in s. 1609.2, International Building Code (2006), and that has an insured value on the structure of $750,000 or more is not eligible for coverage by the corporation unless the structure has opening protections as required under the Florida Building Code for a newly constructed residential structure in that area. A residential structure is deemed to comply with this sub-subparagraph if it has shutters or opening protections on all openings and if such opening protections complied with the Florida Building Code at the time they were installed.

b. Any major structure, as defined in s. 161.54(6)(a), that

is newly constructed, or rebuilt, repaired, restored, or remodeled to increase the total square footage of finished area by more than 25 percent, pursuant to a permit applied for after July 1, 2015, is not eligible for coverage by the corporation if the structure is seaward of the coastal construction control line established pursuant to s. 161.053 or is within the Coastal Barrier Resources System as designated by 16 U.S.C. ss. 3501-3510.

6. With respect to wind-only coverage for commercial lines residential condominiums, effective July 1, 2014, a condominium shall be deemed ineligible for coverage if 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days.

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy

forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

g. Effective January 1, 2013, the corporation shall offer a basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in

which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage

levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that

there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of

local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of the state, one of whom is appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the President

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of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance of at least 10 years' experience with property and casualty insurance as a full-time employee, officer, or owner of a licensed insurance agency, an insurer authorized to transact property insurance in this state, or an insurance trade association and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees with demonstrated expertise in insurance as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. The executive director must have the experience, character, and qualifications required under s. 624.404(3) to serve as the chief executive officer of an insurer. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive

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director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and

matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, ~~if the offer is equal to or less than the corporation's renewal premium for comparable coverage,~~ the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from the corporation. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, a policyholder removed from the corporation through an assumption agreement remains eligible for

coverage from the corporation until the end of the assumption period. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the

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corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 20 ~~15~~ percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, ~~if the offer is equal to or less than the corporation's renewal premium for comparable coverage,~~ the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the

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renewal premium for comparable coverage from the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law

coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy ~~that is~~ offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must be available to defray

deficits in that account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 do not apply.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors. If catastrophe reinsurance is not available at reasonable rates, the corporation need not purchase it, but the corporation shall include the costs of reinsurance to cover its projected 100-year probable maximum loss in its rate calculations even if it does not purchase catastrophe reinsurance.

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its

approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. Must provide that, with respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar

year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who throughout such appointments also hold an appointment as defined in s. 626.015 by an insurer who is authorized to write and is actually writing or renewing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

15. Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but

is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

a. Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as those of the primary dwelling;

b. Carports that are aluminum or carports that are not covered by the same or substantially the same materials as those of the primary dwelling; and

c. Patios that have a roof covering ~~that is~~ constructed of materials that are not the same or substantially the same materials as those of the primary dwelling.

The corporation shall make available a policy for mobile homes or manufactured homes for a minimum insured value of at least $3,000.

18. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

19. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

20. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are

directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

21. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgment signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY

ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

a. The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgment and provide a copy of the statement to the policyholder as part of the first renewal after the effective date of this subparagraph.

b. The signed acknowledgment form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

(n)1. Rates for coverage provided by the corporation must be actuarially sound and subject to s. 627.062, except as otherwise provided in this paragraph. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to

augment the financial resources of the corporation.

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes.

5. Notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed the following for any single personal lines residential policy issued by the corporation that covers an insured's primary residence, and any single commercial lines residential policy issued by the corporation, excluding coverage changes and surcharges:

a. Eleven percent for 2022.

b. Twelve percent for 2023.

c. Thirteen percent for 2024.

d. Fourteen percent for 2025.

e. Fifteen percent for 2026 and all subsequent years.

6. The corporation may also implement an increase to

reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

7. The corporation's implementation of rates as prescribed in subparagraph 5. shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing for each commercial and personal line of business the corporation writes.

8. As used in this paragraph, "primary residence" means the dwelling that the insured has represented as their permanent home on the insurance application or otherwise to the corporation.

(ii) The corporation shall revise the programs adopted pursuant to sub-subparagraph (q)3.a. for personal lines residential policies to maximize policyholder options and encourage increased participation by insurers and agents. After January 1, 2017, a policy may not be taken out of the corporation unless the provisions of this paragraph are met.

1. The corporation must publish a periodic schedule of cycles during which an insurer may identify, and notify the corporation of, policies that the insurer is requesting to take out. A request must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.

2. The corporation must maintain and make available to the agent of record a consolidated list of all insurers requesting to take out a policy. The list must include a description of the coverage offered and the estimated premium for each take-out

request.

3. The corporation must provide written notice to the policyholder and the agent of record regarding all insurers requesting to take out the policy, which notice must inform that a take-out offer that is not more than 20 percent greater than the corporation's premium renders the risk ineligible for coverage from ~~and regarding the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with~~ the corporation. The notice must be in a format prescribed by the corporation and include, for each take-out offer:

a. The amount of the estimated premium;

b. A description of the coverage; and

c. A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

Section 3. Section 627.3518, Florida Statutes, is amended to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program. ~~The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.~~

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

(a) "Corporation" means Citizens Property Insurance Corporation.

(b) "Exclusive agent" means any licensed insurance agent that has, by contract, agreed to act exclusively for one company or group of affiliated insurance companies and is disallowed by the provisions of that contract to directly write for any other unaffiliated insurer absent express consent from the company or

group of affiliated insurance companies.

(c) "Independent agent" means any licensed insurance agent not described in paragraph (b).

(d) "Program" means the clearinghouse created under this section.

(2) In order to confirm eligibility with the corporation and to enhance access of new applicants for coverage and existing policyholders of the corporation to offers of coverage from authorized insurers, the corporation shall establish a program for personal residential risks in order to facilitate the diversion of ineligible applicants and existing policyholders from the corporation into the voluntary insurance market. The corporation shall also develop appropriate procedures for facilitating the diversion of ineligible applicants and existing policyholders for commercial residential coverage into the private insurance market ~~and shall report such procedures to the President of the Senate and the Speaker of the House of Representatives by January 1, 2014~~.

(3) The corporation board shall establish the clearinghouse program as an organizational unit within the corporation. The program shall have all the rights and responsibilities in carrying out its duties as a licensed general lines agent, but may not be required to employ or engage a licensed general lines agent or to maintain an insurance agency license to carry out its activities in the solicitation and placement of insurance coverage. In establishing the program, the corporation may:

(a) Require all new applications, and all policies due for renewal, to be submitted for coverage to the program in order to facilitate obtaining an offer of coverage from an authorized

insurer before binding or renewing coverage by the corporation.

(b) Employ or otherwise contract with individuals or other entities for appropriate administrative or professional services to effectuate the plan within the corporation in accordance with the applicable purchasing requirements under s. 627.351.

(c) Enter into contracts with any authorized insurer to participate in the program and accept an appointment by such insurer.

(d) Provide funds to operate the program. Insurers and agents participating in the program are not required to pay a fee to offset or partially offset the cost of the program or use the program for renewal of policies initially written through the clearinghouse.

(e) Develop an enhanced application that includes information to assist private insurers in determining whether to make an offer of coverage through the program.

(f) For personal lines residential risks, require, before approving all new applications for coverage by the corporation, that every application be subject to a period of 2 business days when any insurer participating in the program may select the application for coverage. The insurer may issue a binder on any policy selected for coverage for a period of at least 30 days but not more than 60 days.

(4) Any authorized insurer may participate in the program; however, participation is not mandatory for any insurer. Insurers making offers of coverage to new applicants or renewal policyholders through the program:

(a) May not be required to individually appoint any agent whose customer is underwritten and bound through the program.

Notwithstanding s. 626.112, insurers are not required to appoint any agent on a policy underwritten through the program for as long as that policy remains with the insurer. Insurers may, at their election, appoint any agent whose customer is initially underwritten and bound through the program. In the event an insurer accepts a policy from an agent who is not appointed pursuant to this paragraph, and thereafter elects to accept a policy from such agent, the provisions of s. 626.112 requiring appointment apply to the agent.

(b) Must enter into a limited agency agreement with each agent that is not appointed in accordance with paragraph (a) and whose customer is underwritten and bound through the program.

(c) Must enter into its standard agency agreement with each agent whose customer is underwritten and bound through the program when that agent has been appointed by the insurer pursuant to s. 626.112.

(d) Must comply with s. 627.4133(2).

(e) May participate through their single-designated managing general agent or broker; however, the provisions of paragraph (6)(a) regarding ownership, control, and use of the expirations continue to apply.

(f) Must pay to the producing agent a commission equal to that paid by the corporation or the usual and customary commission paid by the insurer for that line of business, whichever is greater.

(5) Notwithstanding s. 627.3517, any applicant for new coverage from the corporation is not eligible for coverage from the corporation if provided an offer of coverage from an authorized insurer through the program at a premium that is at

or below the eligibility threshold established in s. 627.351(6)(c)5.a. Whenever an offer of coverage for a personal lines risk is received for a policyholder of the corporation at renewal from an authorized insurer through the program, if the offer is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. ~~equal to or less than the corporation's renewal premium for comparable coverage~~, the risk is not eligible for coverage with the corporation. In the event an offer of coverage for a new applicant is received from an authorized insurer through the program, and the premium offered exceeds the eligibility threshold contained in s. 627.351(6)(c)5.a., the applicant or insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. In the event an offer of coverage for a personal lines risk is received from an authorized insurer at renewal through the program, and the premium offered is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. ~~more than the corporation's renewal premium for comparable coverage~~, the insured is not eligible to ~~may elect to accept such coverage, or may elect to accept or~~ continue coverage with the corporation. Section 627.351(6)(c)5.a.(I) does not apply to an offer of coverage from an authorized insurer obtained through the program. An applicant for coverage from the corporation who was declared ineligible for coverage at renewal by the corporation in the previous 36 months due to an offer of coverage pursuant to this subsection shall be considered a renewal under this section if the corporation determines that the authorized insurer making the offer of coverage pursuant to this subsection continues to

insure the applicant and increased the rate on the policy in excess of the increase allowed for the corporation under s. 627.351(6)(n)5.

(6) Independent insurance agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Are granted and must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Such ownership is granted for as long as the insured remains with the agency or until sold or surrendered in writing by the agent. Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) May accept an appointment from any insurer participating in the program.

(d) May enter into either a standard or limited agency agreement with the insurer, at the insurer's option.

Applicants ineligible for coverage in accordance with subsection

(5) remain ineligible if their independent agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer participating in the program.

(7) Exclusive agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) Must only facilitate the placement of an offer of coverage from an insurer whose limited servicing agreement is approved by that exclusive agent's exclusive insurer.

(d) May enter into a limited servicing agreement with the insurer making an offer of coverage, and only after the exclusive agent's insurer has approved the limited servicing agreement terms. The exclusive agent's insurer must approve a limited service agreement for the program for any insurer for which it has approved a service agreement for other purposes.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their exclusive agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer making an offer of coverage to that applicant.

(8) Submission of an application for coverage by the corporation to the program does not constitute the binding of coverage by the corporation, and failure of the program to obtain an offer of coverage by an insurer may not be considered acceptance of coverage of the risk by the corporation.

(9) The 45-day notice of nonrenewal requirement set forth in s. 627.4133(2)(b)5. applies when a policy is nonrenewed by the corporation because the risk has received an offer of coverage pursuant to this section which renders the risk ineligible for coverage by the corporation.

(10) The program may not include commercial nonresidential policies.

(11) Proprietary business information provided to the corporation's clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(a) As used in this subsection, the term "proprietary business information" means information, regardless of form or characteristics, which is owned or controlled by an insurer and:

1. Is identified by the insurer as proprietary business information and is intended to be and is treated by the insurer as private in that the disclosure of the information would cause harm to the insurer, an individual, or the company's business

operations and has not been disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;

2. Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to the clearinghouse; and

3. Includes:

a. Trade secrets, as defined in s. 688.002.

b. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Proprietary business information may be found in underwriting criteria or instructions which are used to identify and select risks through the program for an offer of coverage and are shared with the clearinghouse to facilitate the shopping of risks with the insurer.

(b) The clearinghouse may disclose confidential and exempt proprietary business information:

1. If the insurer to which it pertains gives prior written consent;

2. Pursuant to a court order; or

3. To another state agency in this or another state or to a federal agency if the recipient agrees in writing to maintain the confidential and exempt status of the document, material, or other information and has verified in writing its legal authority to maintain such confidentiality.

Section 4. Paragraphs (f), (g), and (h) are added to

subsection (5) of section 627.7011, Florida Statutes, to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.—

(5) This section does not:

(f)1. Prohibit an insurer, notwithstanding paragraph (1)(a), from providing limited coverage on a personal lines residential property insurance policy by including a roof surface type reimbursement schedule. If included in the policy, a roof surface type reimbursement schedule must do all of the following:

a. Provide reimbursement for repair, replacement, and installation based on the annual age of a roof surface type.

b. Provide full replacement coverage for:

(I) Any roof surface type less than 10 years old;

(II) A total loss to a primary structure in accordance with the valued policy law under s. 627.702 which is caused by a covered peril; and

(III) A loss to the roof caused by a storm declared to be a hurricane by the National Hurricane Center.

c. Use annual depreciation amounts that:

(I) Are actuarially justified and meet the requirements of s. 627.062; and

(II) Do not exceed 4 percent unless actuarially justified.

d. Be approved by the office.

e. Include at the top of the roof surface type schedule, in bold type no smaller than 12 points, the following statement:

"PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO PURCHASE COVERAGE ON YOUR ROOF ACCORDING

TO A ROOF SURFACE TYPE REIMBURSEMENT SCHEDULE. IF YOUR ROOF IS DAMAGED BY A COVERED PERIL, YOU WILL RECEIVE A PAYMENT AMOUNT FOR YOUR ROOF ACCORDING TO THE SCHEDULE BELOW. BE ADVISED THAT THIS MAY RESULT IN YOU HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR ROOF. PLEASE DISCUSS WITH YOUR INSURANCE AGENT."

f. Be provided to the insured with the policy documents at issuance and renewal.

2. A residential property insurance policy may convert to a roof surface type reimbursement schedule at renewal if the roof is at least 10 years old and the policyholder:

a. Receives a Notice of Change in Policy Terms pursuant to s. 627.43141; and

b. Accepts the written notice of renewal premium required under s. 627.4133, by paying the premium.

(g) Prohibit an insurer, notwithstanding paragraph (1)(a), from providing coverage on a personal lines residential property insurance policy that limits coverage for a roof to a stated value sublimit of coverage. If included in a policy, a stated value sublimit of coverage must do all of the following:

1. Provide full replacement coverage for:

a. Any roof surface type less than 10 years old;

b. A total loss to a primary structure in accordance with the valued policy law under s. 627.702 which is caused by a covered peril; and

c. A loss to the roof caused by a storm declared to be a hurricane by the National Hurricane Center.

2. Include in the policy documents at issuance and at

renewal, in bold type no smaller than 12 points, the following statement:

"PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO PURCHASE A STATED VALUE SUBLIMIT OF COVERAGE ON YOUR ROOF. BE ADVISED THAT THIS MAY RESULT IN YOU HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR ROOF. PLEASE DISCUSS WITH YOUR INSURANCE AGENT."

(h) Prohibit an insurer that provides roof reimbursement on the basis of a roof surface type reimbursement schedule or that limits coverage for a roof to a stated value sublimit of coverage from also offering roof reimbursement on the basis of replacement costs.

Section 5. For the purpose of incorporating the amendments made by this act to section 627.351, Florida Statutes, in a reference thereto, subsection (10) of section 624.424, Florida Statutes, is reenacted to read:

624.424 Annual statement and other information.—

(10) Each insurer or insurer group doing business in this state shall file on a quarterly basis in conjunction with financial reports required by paragraph (1)(a) a supplemental report on an individual and group basis on a form prescribed by the commission with information on personal lines and commercial lines residential property insurance policies in this state. The supplemental report shall include separate information for personal lines property policies and for commercial lines property policies and totals for each item specified, including

premiums written for each of the property lines of business as described in ss. 215.555(2)(c) and 627.351(6)(a). The report shall include the following information for each county on a monthly basis:

(a) Total number of policies in force at the end of each month.

(b) Total number of policies canceled.

(c) Total number of policies nonrenewed.

(d) Number of policies canceled due to hurricane risk.

(e) Number of policies nonrenewed due to hurricane risk.

(f) Number of new policies written.

(g) Total dollar value of structure exposure under policies that include wind coverage.

(h) Number of policies that exclude wind coverage.

Section 6. For the purpose of incorporating the amendments made by this act to section 627.351, Florida Statutes, in a reference thereto, section 627.3517, Florida Statutes, is reenacted to read:

627.3517 Consumer choice.—No provision of s. 627.351, s. 627.3511, or s. 627.3515 shall be construed to impair the right of any insurance risk apportionment plan policyholder, upon receipt of any keepout or take-out offer, to retain his or her current agent, so long as that agent is duly licensed and appointed by the insurance risk apportionment plan or otherwise authorized to place business with the insurance risk apportionment plan. This right shall not be canceled, suspended, impeded, abridged, or otherwise compromised by any rule, plan of operation, or depopulation plan, whether through keepout, take-out, midterm assumption, or any other means, of any insurance

risk apportionment plan or depopulation plan, including, but not limited to, those described in s. 627.351, s. 627.3511, or s. 627.3515. The commission shall adopt any rules necessary to cause any insurance risk apportionment plan or market assistance plan under such sections to demonstrate that the operations of the plan do not interfere with, promote, or allow interference with the rights created under this section. If the policyholder's current agent is unable or unwilling to be appointed with the insurer making the take-out or keepout offer, the policyholder shall not be disqualified from participation in the appropriate insurance risk apportionment plan because of an offer of coverage in the voluntary market. An offer of full property insurance coverage by the insurer currently insuring either the ex-wind or wind-only coverage on the policy to which the offer applies shall not be considered a take-out or keepout offer. Any rule, plan of operation, or plan of depopulation, through keepout, take-out, midterm assumption, or any other means, of any property insurance risk apportionment plan under s. 627.351(2) or (6) is subject to ss. 627.351(2)(b) and (6)(c) and 627.3511(4).

Section 7. For the purpose of incorporating the amendments made by this act to section 627.351, Florida Statutes, in a reference thereto, subsection (1) of section 627.712, Florida Statutes, is reenacted to read:

627.712 Residential windstorm coverage required; availability of exclusions for windstorm or contents.—

(1) An insurer issuing a residential property insurance policy must provide windstorm coverage. Except as provided in paragraph (2)(c), this section does not apply to risks that are

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

eligible for wind-only coverage from Citizens Property Insurance Corporation under s. 627.351(6), and risks that are not eligible for coverage from Citizens Property Insurance Corporation under s. 627.351(6)(a)3. or 5. A risk ineligible for coverage by the corporation under s. 627.351(6)(a)3. or 5. is exempt from this section only if the risk is located within the boundaries of the coastal account of the corporation.

Section 8. This act shall take effect July 1, 2022.

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

The Florida Senate

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2/28/22
Meeting Date

Approps
Committee

SB 1728
Bill Number or Topic

700004
Amendment Barcode (if applicable)

Name Carolyn Johnson Phone 521-1200

Address 136 S Bronough St Email
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: FL Chamber of Commerce

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

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

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Committee

PCS for CS/SB 1728
Bill Number or Topic

892324
Amendment Barcode (if applicable)

Name William Haselden

Phone 850-567-0020

Address 115 N. Calhoun St., Suite 11
Street

Email will@haseldenlaw.net

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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Committee

1728
Bill Number or Topic

Amendment Barcode (if applicable)

Name Greg Black

Phone 8505098022

Address PO Box 838
Street

Email Greg@WaypointStrat.com

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:
R Street Institute

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

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SB 1728
Bill Number or Topic

Amendment Barcode (if applicable)

Name Carolyn Johnson

Phone 521-1200

Address 136 S Bronough St
Street

Email

Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
FL Chamber of Commerce

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

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Committee

1728
Bill Number or Topic

Amendment Barcode (if applicable)

Name BG Murphy

Phone 850-893-4155

Address 3159 Shamrock St. S.
Street

Email bmurphy@faia.com

Tallahassee FL 32312
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida Association of Insurance Agents

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

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Committee

CS/SB 1728: Property Insurance
Bill Number or Topic

Amendment Barcode (if applicable)

Name Scott Matiyow

Phone 850-597-7425

Address 215 South Monroe Street, Suite 835
Street

Email scott.matiyow@piff.net

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:
Personal Insurance Federation FL

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

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Appropriations
Committee

1728
Bill Number or Topic

Amendment Barcode (if applicable)

Name Adam Basford

Phone 850-224-7173

Address 516 N Adams
Street

Email abasford@aif.com

Tallahassee | FL | 32301
City | *State* | *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Associated Industries of Florida

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

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Committee

SB 728
Bill Number or Topic

Amendment Barcode (if applicable)

Name Christine Ashburn

Phone 850-[redacted] 513-3746

Address 2101 Maryland Circle
Street

Email christine.ashburn@citizensfla.com

Tallahassee FL 32303
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: Citizens Property Insurance

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

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Approps.
Committee

1728
Bill Number or Topic

Amendment Barcode (if applicable)

Name Amanda Fraser Phone 850-556-1401

Address Street

Email

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: APCIA

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

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2/28/22	SB 1728
Meeting Date	Bill Number or Topic
Appropriations	
Committee	Amendment Barcode (if applicable)

Name Gary Guzzo

Phone 850-681-0024

Address 108 S Monroe Street
Street

Email gguzzo@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:
Florida Insurance 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)

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Appropriations
Committee

CS/SB 1728
Bill Number or Topic

Amendment Barcode (if applicable)

Name Paul Handerhan

Phone 561 704 0428

Address 120 S Monroe Street
Street

Email paul@rambaconsulting.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:
FAIR

☐ 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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Committee

CS/SB 1728
Bill Number or Topic

Amendment Barcode (if applicable)

Name Hillary Cassel - Florida Policyholders Coperative Phone 561.202.5713

Address 888 S. Andrews Ave.
Street

Ft. Lauderdale
City State Zip

Email Cassel.hillary@gmail.com

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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2/28/22
Meeting Date

Appropriations
Committee

1728
Bill Number or Topic

604840
Amendment Barcode (if applicable)

Name Steve Geller Phone 954-315-3926

Address 110 East Broward Blvd. 17th Floor Email SteveJGellerlawfirm.com
Street

Ft. Lauderdale FL 33301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: Florida Association of Public Insurance Adjusters (FAPIA)

☐ 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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2/28/22
Meeting Date

Appropriations
Committee

1728
Bill Number or Topic

700006
Amendment Barcode (if applicable)

Name Adam Basford

Phone 850-224-7173

Address 516 N Adams
Street

Email abasford@aif.com

Tallahassee | FL | 32301
City | *State* | *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Associated Industries of Florida

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

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

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PCS for CS/SB 1728
Bill Number or Topic

700006
Amendment Barcode (if applicable)

Name William Haselden

Phone 850-567-0020

Address 115 N. Calhoun St., Suite 11
Street

Email will@haseldenlaw.net

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

APPEARANCE RECORD

Deliver both copies of this form to
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FEb. 28, 2022
Meeting Date

Appropriations
Committee

PCS for CS/SB 1728
Bill Number or Topic

336290
Amendment Barcode (if applicable)

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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 Appropriations

BILL:	CS/SB 1796
INTRODUCER:	Judiciary Committee and Senator Gruters and others
SUBJECT:	Dissolution of Marriage
DATE:	February 25, 2022 REVISED: 2/28/22

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Fav/CS**
2.	Dale	Sadberry	AP	**Fav/1 amendment**
3.			RC	

Please see Section IX. for Additional Information:

AMENDMENTS - Significant amendments were recommended

I. Summary:

CS/SB 1796 amends laws related to alimony and bifurcation of a dissolution of marriage cases. Changes to alimony law applicable to any final judgment entered on or after July 1, 2022 include:

- Permanent (lifetime) alimony is eliminated, leaving bridge-the-gap, rehabilitative, and durational forms of alimony.
- Rehabilitative alimony is limited to 5 years.
- Durational alimony:
  - May not be awarded for a marriage of less than 3 years, is limited to 50 percent of the term of the marriage if the marriage was between 3 and 10 years, 60 percent if between 10 and 20 years, or 75 percent if the marriage lasted more than 20 years. These time limits are extended if the obligee is disabled or is a full time caretaker of a totally disabled child of both spouses, but only so long as the obligee qualifies.
  - May not exceed the lesser of the obligee's reasonable need or 35 percent of the difference between the parties' net incomes.
- The bill creates a presumption that both parties will have a lower standard of living after dissolution of the marriage.
- No alimony may be awarded to a party whose net income exceeds the net income of the other party.
- A court may not require an obligor to purchase life insurance to secure the award of alimony.
- The concept of a supportive relationship is expanded to allow consideration of a supportive relationship when first setting alimony in the dissolution of marriage case. The criteria

defining a supportive relationship at the time of dissolution is the same as for a later modification.

Current law on the effect of retirement on alimony is common law. The bill codifies standards and procedures related to retirement of a party to a dissolution of marriage case:

- A proposed obligor who is retired at the time of the dissolution of marriage may not be required to pay any form of alimony unless:
  - The exceptions to retirement exist (see below); and
  - The party seeking alimony does not qualify for any Social Security benefits.
- If the obligor seeks to retire in the future (final judgment after July 1, 2022), the obligor must give one years' prior notice of the planned retirement. The retirement will be effective and durational alimony will end when the obligor reaches the earlier of the Social Security full retirement age or when persons of his or her profession typically retire, unless the obligee timely objects by showing any of the following:
  - The exceptions to retirement exist (see below);
  - If applicable, the obligor has not proven that he or she has reached the age when persons of his or her profession typically retire; or
  - The obligor continues to work beyond the planned retirement and earns active income of more than 50 percent of the past 3-year average.
- If the obligor seeks to retire in the future (modification of a final judgment entered prior to July 1, 2022), the obligor must give one years' prior notice of the planned retirement. The retirement will be effective and the alimony will phase out (25 percent a year) starting when the obligor reaches the earlier of age 65 or when persons of his or her profession typically retire, unless the obligee timely objects by showing any of the following:
  - The exceptions to retirement exist (see below); or
  - The obligor continues to work beyond the planned retirement and earns active income of more than 50 percent of the past 3-year average.
- Alternatively, there will be no phase out and alimony may be modified or terminated based on a reasonable retirement.
- The exceptions to retirement that allow a court to extend alimony, in part or in whole, beyond the obligor's retirement are:
  - The party seeking alimony is full-time caregiver to a disabled common child;
  - The party seeking alimony would have an income of less than 130 percent of the federal poverty level; or
  - The marital settlement agreement, if one was entered into, prohibits the modification.

Bifurcation refers to the process where the court dissolves the marriage, reserving other matters such as property distribution, alimony, timesharing, and child support for future court action. The bill gives either party to a dissolution of marriage the right to bifurcation if the case has been pending for longer than two years from the date the respondent received the summons, effective for petitions filed on or after July 1, 2022.

The bill will have no fiscal impact on state government.

The bill is effective July 1, 2022, and applies to cases pending on the effective date except as noted.

II. Present Situation:

Dissolution of marriage may involve many different but related matters. The matters related to dissolution addressed by this bill are alimony and bifurcation.

Alimony

Alimony is a court-ordered allowance that one spouse pays to the other spouse for maintenance and support while they are separated, while they are involved in a matrimonial lawsuit, or after they are divorced.[1] Alimony may be agreed to by the parties or awarded by the court after an evidentiary hearing. While child support is determined primarily through a statutory formula, alimony is determined at the discretion of the trial court based on statutory and equitable factors.

Calculation of the Amount of Alimony

There is no fixed formula for alimony. Alimony is based on both financial need and the ability to pay.[2] After making an initial determination to award alimony, the court must consider ten factors:

- The standard of living established during the marriage.
- The length of marriage.
- Ages and physical and emotional condition of the parties.
- Financial resources of the parties.
- Earning capacity, education level, vocational skill, and employability of the parties.
- Marital contributions, including homemaking, child care, and education and career building of the other party.
- Responsibilities of each party towards minor children.
- Tax treatment and consequences of alimony awards.
- All sources of income.
- Any other factor that advances equity and justice.[3]

The income tax factor has less relevance than in the past. Beginning January 1, 2019, alimony or separate maintenance payments are not deductible from the income of the obligor, or includable in the income of the obligee, if made under a divorce or separation agreement executed after December 31, 2018. This also applies to a divorce or separation agreement executed on or before December 31, 2018, and modified after December 31, 2018, as long as the modification changes the terms of the alimony or separate maintenance payments and states that the alimony or separate maintenance payments are not deductible by the obligor or includable in the income of the obligee. On the other hand, alimony or separate maintenance payments are generally deductible from the income of the obligor and includable in the income of the obligee, if made under a divorce or separation agreement executed on or before December 31, 2018, even if the

[1] Alimony, BLACK'S LAW DICTIONARY (11th ed. 2019).
[2] Section 61.08(2), F.S.
[3] Section 61.08(2)(a)-(j), F.S.

agreement was modified after December 31, 2018, so long as the modification is not one described in the preceding sentence.[4]

The court may also consider adultery by either spouse in a decision to award alimony.[5] That consideration is dependent upon the circumstances of each particular case. Absent a showing of a related depletion of marital assets, a party's adulterous misconduct is not a valid reason to award a greater share of those marital assets to the innocent spouse or to deny the adulterous spouse alimony. Furthermore, despite evidence of adultery, need and ability to pay remain the primary considerations in awarding alimony.[6]

To protect an alimony award, the court may order an obligor to maintain a life insurance policy.[7] A court making the requirement must first make specific findings regarding the availability and cost of insurance, the obligor's ability to pay, and the special circumstances that warrant the requirement for security of the obligation.[8] The special circumstances required to support an order mandating life insurance include "a spouse potentially left in dire financial straits after the death of the obligor spouse due to age, ill health and/or lack of employment skills, obligor spouse in poor health, minors living at home, supported spouse with limited earning capacity, obligor spouse in arrears on support obligations, and cases where the obligor spouse agreed on the record to secure an award with a life insurance policy."[9]

An award of alimony may not result in the obligor with significantly less net income than the net income of the obligee absent exceptional circumstances.[10] What qualifies as exceptional circumstances is undefined.

Types of Alimony

For purposes of determining the appropriate type of alimony to award, marriages are classified by term or length of marriage, based on the time from the date of marriage to the date the dissolution of marriage action was filed:

- Short term means less than 7 years.
- Moderate-term means greater than 7 years but less than 17 years.
- Long-term means greater than 17 years.[11]

The length of the marriage does not include time spent cohabitating prior to marriage.[12]

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[4] IRS, *CLARIFICATION: Changes to deduction for certain alimony payments effective in 2019,* (updated March 24, 2021), *available at* https://www.irs.gov/forms-pubs/clarification-changes-to-deduction-for-certain-alimony-payments-effective-in-2019 (last viewed Jan. 24, 2022).
[5] Section 61.08(1), F.S.
[6] *Williamson v. Williamson*, 367 So. 2d 1016, 1019 (Fla.1979); *Noah v. Noah*, 491 So. 2d 1124, 1127 (Fla. 1986); *Keyser v. Keyser*, 204 So. 3d 159, 161 (Fla. 1st DCA 2016).
[7] Section 61.08(3), F.S.
[8] *O'Neill v. O'Neill*, 305 So. 3d 551, 554 (Fla. 4th DCA 2020).
[9] *Kotlarz v. Kotlarz*, 21 So. 3d 892, 893 (Fla. 1st DCA 2009).
[10] Section 61.08(9), F.S.; *Rabadan v. Rabadan*, 322 So. 3d 660 (Fla. 4th DCA 2021).
[11] Section 61.08(4), F.S. This triad was first enacted in 2010. Ch. 2010-199, Laws of Fla.
[12] *Taylor v. Davis*, 324 So. 3d 570 (Fla. 1st DCA 2021) (couple cohabitated for 24 years prior to 3 year marriage, court denied an award of permanent alimony because it was a short-term marriage).

Florida law recognizes four forms of alimony: bridge-the-gap, rehabilitative, durational, and permanent periodic alimony.[13]

Bridge-the-gap alimony:[14]
- Is designed to assist a party in his or her transition from being married to being single.
- May be awarded in a marriage of any term.
- Cannot exceed 2 years in duration.
- May not be modified.
- Terminates upon death or remarriage.

Rehabilitative alimony:[15]
- Is designed to assist a party in establishing the capacity for self-support through either the redevelopment of previous skills or credentials; or the acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.
- May be awarded in a marriage of any term.
- Can be of any duration.
- May be modified based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan.
- Does not automatically terminate upon remarriage.

Durational alimony:[16]
- Is designed to provide a party with economic assistance for a set period of time.
- May be awarded following a marriage of short or moderate duration, or following a marriage of long duration if there is no ongoing need for support on a permanent basis.
- May not exceed the length of the marriage.
- May be modified as to amount, based upon a substantial change in circumstances; but the length may not be modified except under exceptional circumstances.
- Terminates upon the death of either party or upon the remarriage of the party receiving alimony.

Permanent alimony:[17]
- Is designed to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage.
- May be awarded only after a finding that no other form of alimony is fair and reasonable under the circumstances of the parties, following a marriage of:
  - Long duration, if such an award is appropriate upon consideration of the ten factors by a preponderance of the evidence;
  - Moderate duration, if such an award is appropriate based upon clear and convincing evidence after consideration of the 10 factors; or
  - Short duration, if there are written findings of exceptional circumstances.

[13] Section 61.08(1), F.S.
[14] Section 61.08(5), F.S.
[15] Section 61.08(6), F.S.
[16] Section 61.08(7), F.S.
[17] Section 61.08(8), F.S.

- Is not for a fixed period of time.
- May be modified or terminated based upon a substantial change in circumstances, including retirement of the obligor or upon the existence of a supportive relationship benefiting the obligee.
- Terminates upon the death of either party or upon the remarriage of the party receiving alimony.

Modification or Termination of Alimony - In General

Where allowed, either party may seek modification (up to termination) of an alimony award on the grounds of a substantial change in circumstances.[18] To obtain a modification of alimony, the party seeking modification must allege, and the trial court must find, that:

- There has been a substantial change in circumstances.
- The change was not contemplated at the time of the final judgment of dissolution.
- The change is sufficient, material, permanent, and involuntary.[19]

The mere existence of a substantial change in circumstances does not automatically lead to a modification or termination of alimony, it merely opens up the question of the appropriate amount of alimony based on the new situation and on the normal equitable factors, namely need and ability to pay. The court may modify support retroactively to the date of the filing of the motion.[20] Where the parties to a dissolution of marriage settled the case and have designated alimony as non-modifiable in the marital settlement agreement, the court may not thereafter modify the alimony.[21]

Modification Based on a Supportive Relationship

To avoid termination of an alimony award because of remarriage, it was once common for an obligee former spouse to simply "live with" someone else in a committed but non-marital arrangement. Today, the existence of a supportive relationship between the obligee and a third party may be a substantial change in circumstances that warrants a modification (up to termination) of alimony. To modify alimony on an assertion of cohabitation between the obligee and a third party, the court must find:

- The existence of a supportive relationship between the obligee and a third party; and
- That the obligee lives with the third party.

To determine whether a relationship is supportive, the court will examine:

- The extent to which the obligee and the third party hold themselves out as a married couple;
- The length of time that the third party has resided with the obligee;
- Whether the obligee and the third party have jointly purchased property;
- The extent to which the obligee and third party commingle financial assets; and
- The extent to which one of the parties supports the other party.[22]

[18] Section 61.14(1)(a), F.S.
[19] *Golson v. Golson*, 207 So. 3d 321, 325 (Fla. 5th DCA 2016); *Tanner v. Tanner*, 2021 WL 4877772 (Fla. 2nd DCA 2021).
[20] Section 61.14(1)(a), F.S.
[21] *Dills v. Perez*, 2021 WL 5140865 (Fla. 5th DCA 2021)("parties to a marital dissolution are free to enter into contractual agreements that include provisions no court of law could impose.").
[22] Section 61.14(b), F.S.

The burden is on the obligor to show by a preponderance of evidence that a supportive relationship exists.[23]

Modification Based on Retirement

Retirement of a party in a pending dissolution of marriage case falls within the "need and ability to pay" framework. Voluntary retirement may qualify as a substantial change in circumstances which warrants a modification or termination of an existing alimony award. It is an exception to the general rule that a substantial change in circumstances must result from an involuntary action.

Retirement, whether related to an initial award of alimony or as a substantial change in circumstances for modification, is not addressed in statute. In deciding whether to modify or terminate alimony based on retirement of the obligor, the courts look to whether the retirement is reasonable. The leading case in this area ruled:

> In determining whether a voluntary retirement is reasonable, the court must consider the payor's age, health, and motivation for retirement, as well as the type of work the payor performs and the age at which others engaged in that line of work normally retire. . . . [A] payor spouse should not be permitted to unilaterally choose voluntary retirement if this choice places the receiving spouse in peril of poverty. Thus, the court should consider the needs of the receiving spouse and the impact a termination or reduction of alimony would have on him or her. In assessing those needs, the court should consider any assets which the receiving spouse has accumulated or received since the final judgment as well as any income generated by those assets.[24]

Bifurcation of a Dissolution Case

Normally, a dissolution of marriage case is resolved when the court issues an omnibus final judgment of dissolution, which judgment dissolves the marriage, splits the debts and property of the couple, and, where required, resolves timesharing with the children, child support, and alimony. The term "bifurcation" refers to the process whereby the court grants the dissolution of marriage but reserves jurisdiction to resolve the remaining issues between the parties at a later date.

Parties seek bifurcation mostly for purposes of remarriage. Bifurcation is allowed but its use is discouraged by the courts. The Florida Supreme Court explained why:

> [W]e believe the trial court should avoid this split procedure. The general law and our procedural rules at both the trial and appellate levels are designed for one final judgment and one appeal. Splitting the process can cause multiple legal and procedural problems which result in delay and

[23] Section 61.14(1)(b)1., F.S.
[24] *Pimm v. Pimm*, 601 So. 2d 534, 537 (Fla. 1992).

> additional expense to the litigants. This split procedure should be used only when it is clearly necessary for the best interests of the parties or their children.[25]

The Florida Supreme Court has established trial court time standards for the most common types of cases. The time standards are not deadlines, but represent the time within which most cases should be resolved. The time standard for a contested domestic relations case is 180 days from filing to final disposition.[26]

Presumptions

A presumption in a legal proceeding is an assumption of the existence of a fact which is in reality unproven by direct evidence. A presumption is derived from another fact or group of facts that has been proven in the action. If a presumption is recognized, the presumed fact must be found to be present if the trier of fact finds that the underlying facts which give rise to the presumption exist. Presumptions usually assist in managing circumstances in which direct proof is rendered difficult. Presumptions arising out of considerations of fairness, public policy, and probability, as well as judicial economy, are also useful devices for allocating the burden of proof.[27] There are two types of presumption applicable to civil actions -- a presumption affecting the burden of producing evidence and a presumption affecting the burden of proof.[28]

Presumptions that are recognized primarily to facilitate the determination of an action, rather than to implement public policy, are presumptions affecting the burden of producing evidence. These so-called bursting bubble presumptions are recognized when the underlying facts are proved to exist and they remain in effect until credible evidence is introduced to disprove the presumed fact. Once the evidence of the nonexistence of the presumed fact is offered, the presumption disappears.[29]

Any presumption not falling within the category of presumptions affecting the burden of producing evidence is a presumption affecting the burden of proof.[30] These presumptions are recognized because they express a policy that society deems desirable. When proof is introduced of the basic facts giving rise to a presumption affecting the burden of proof, the presumption operates to shift the burden of persuasion regarding the presumed fact to the opposing party.[31]

Social Security Retirement Age

The original Social Security Act of 1935 set the age for receiving full retirement benefits at 65.[32] Citing improvements in the health of older people and increases in average life expectancy as primary reasons for increasing the normal retirement age, Congress has increased the age for full

[25] *Claughton v. Claughton*, 393 So. 2d 1061, 1062 (Fla. 1980).
[26] Fla. R. Jud. Admin. 2.250(a)(1)(C).
[27] *Presumptions—Generally*, 1 Fla. Prac., Evidence s. 301.1 (2020 ed.).
[28] Section 90.302, F.S.
[29] *Types of presumptions which affect the burden of producing evidence*, 1 Fla. Prac., Evidence s. 303.1 (2020 ed.).
[30] Section 90.304, F.S.
[31] *Types of presumptions which affect the burden of proof*, 1 Fla. Prac., Evidence § 304.1 (2020 ed.).
[32] U.S. Social Security Administration, *Social Security Fact Sheet: Increase in Retirement Age*, https://www.ssa.gov/pressoffice/IncRetAge.html (last viewed Feb. 23, 2022).

retirement. On the effective date of this bill, the full retirement age for Social Security purposes will be 66 years and 4 months of age. It will increase gradually in the future until it reaches 67 years of age on January 1, 2027.[33]

The minimum age for claiming Social Security retirement benefits is 62. Benefits are reduced when a person elects to take early benefits.[34] The act increasing the age for full benefits did not change the minimum age for claiming benefits.

III. Effect of Proposed Changes:

Alimony

Forms of Alimony

The bill eliminates permanent alimony as a form of alimony that a court may award.[35] If the court orders a combination of forms of alimony, it must make written findings regarding the basis for the award. A combination may only be awarded to provide greater economic assistance for the purpose of rehabilitation of the obligee.

Criteria for an Award of Alimony

The bill repeals current law that allows a court to consider the adultery of either spouse when determining the amount, if any, of alimony to award.

The bill requires the court to make specific written findings of the need for alimony. The bill amends the 10 factors for consideration in determining the amount of an award of alimony as follows:

- The standard of living established during the marriage factor is limited. In looking at the standard of living during the marriage, the court must take into account the needs and necessities of life for each party after dissolution. The bill also creates a rebuttable presumption that both parties will have a lower standard of living after the dissolution.
- The tax treatment factor is modified by repeal of the portion regarding the tax treatment of the alimony. This reflects a change in the federal tax code effective January 1, 2019.
- A court using the "any other factor" language must specify the other factor and the findings of fact justifying the factor.

The bill prohibits a court from requiring that the obligor purchase life insurance or secure a bond or other security naming the obligee as beneficiary. The bill adds that the obligee may purchase life insurance on the obligor, and that the obligor must cooperate with the application and underwriting process. The bill implies that an obligee has an insurable interest in the life of obligor.

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[33] U.S. Social Security Administration, *Retirement Benefits*, https://www.ssa.gov/benefits/retirement/planner/agereduction.html (last viewed Feb. 23, 2022).
[34] *Id*.
[35] Permanent alimony could effectively still be created by the parties if they agree in their marital settlement agreement to durational alimony that is non-modifiable and extends for enough years that it extends beyond their lifetimes.

The bill changes the length of time married as a classification of a marriages being either short-term, moderate-term, or long-term. A short-term marriage is changed to 0-10 years, a moderate-term marriage is changed to 10-20 years, and a long-term marriage is changed to 20 or more years duration. The bill also repeals references to these three terms of marriage; thus, the changes in length of marriages has no effect.

The bill limits the length of an alimony award:

- Bridge-the-gap alimony is not changed by the bill, and remains limited to 2 years.
- Rehabilitative alimony is limited to the lesser of 5 years or upon early completion of the rehabilitation plan.
- No durational alimony may be awarded if the marriage lasted fewer than 3 years.[36] Durational alimony may end upon retirement of the obligor (see discussion below). With two exceptions, durational alimony of a marriage of over 3 years is limited in duration to:
  - 50 percent of the length of the marriage if the length of the marriage was between 3 and 10 years.
  - 60 percent of the length of the marriage if the length of the marriage was between 10 and 20 years.
  - 75 percent of the length of the marriage if the length of the marriage was over 20 years.
- The two exceptions regarding the maximum length of durational alimony, which thereby allow durational alimony to extend beyond the maximum length above, but only apply so long as there is a need for the special exception. They are:
  - Where the party seeking alimony is permanently mentally and physically disabled; or
  - Where the party seeking alimony is the full-time caregiver to a fully and permanently mentally or physically disabled child who is common to the parties.

The bill also changes durational alimony to:

- Limit the amount of durational alimony to the lesser of the obligee's reasonable need or no more than 35 percent of the difference between the parties' net incomes.
- Add that proof of a supportive relationship between the obligee and another person, at any time starting 180 days prior to the filing of the action for dissolution, may be considered by the court. The factors that a court must consider in finding whether a supportive relationship exists are the same factors used in current law applicable to a modification based on a supportive relationship.
- Repeal the requirement to show "exceptional circumstances" in order to modify the length of the alimony.
- Codify standards for retirement by an obligor (see retirement discussion below).

The term "net income" is defined by the bill as gross income[37] minus allowable deductions, which are:

- Federal, state, or local income tax deductions, adjusted for actual filing status and allowable dependents and income tax liabilities.
- Federal insurance contributions or self-employment tax.

[36] The length of the marriage is calculated as follows: the time period starts on the date of the marriage, and ends on date of the filing of the petition for dissolution of the marriage.

[37] The bill references the definition of "gross income" in the child support law at s. 61.30(2), F.S. That subsection broadly includes all forms of income, including imputed income, but excluding public support payments.

- Mandatory union dues.
- Mandatory retirement payments.
- Health insurance payments, excluding payments for coverage of a minor child.
- Court-ordered support for other children which is actually paid.
- Spousal support paid pursuant to a court order from a previous marriage.

The bill makes the following additional changes to, and limits on, an alimony award:

- The court may not use potential Social Security benefits in calculating imputed income.
- For a spouse to claim disability as grounds for not imputing income to that spouse, the spouse must either be actually qualified for federal Social Security benefits or must show that he or she would qualify as disabled under that program.
- The court must consider all alimony payments made prior to the final hearing, whether voluntary or court-ordered, when determining the amount and duration of alimony awarded in the final judgment of dissolution.
- The bill repeals the provision providing that an award of alimony may not leave the obligor with significantly less net income than the obligee, except with exceptional circumstances. Instead, the bill provides that, notwithstanding any other statute regarding alimony, alimony may not be awarded to a party who has a monthly net income that is equal to or more than the other party's monthly net income.

Retirement - Cases First Adjudicated After July 1, 2022

When an obligor reaches the Social Security full retirement age, or reaches the customary retirement age for his or her profession, durational alimony ends, provided that:

- Notice of retirement was personally served on the obligee, or his or her last known attorney of record, at least one year prior to the intended date of retirement.
- The obligee has not objected, or if the retirement was objected to, the court has approved the retirement.

Any of the following are grounds for objection to retirement:

- That the obligee's income after the modification or termination would be less than 130 percent of the federal poverty guidelines for a one-person household, as published by the United States Department of Health and Human Services, based on the obligee's income and investable assets, including any retirement assets from which the obligee can access income without incurring early withdrawal penalties.
- That the retirement is a violation of the terms of the marital settlement agreement between the parties because the marital settlement agreement either does not allow for modification or termination of the alimony award or the proposed reduction in alimony does not comply with applicable terms for modification of alimony specified in the agreement.
- That the obligee is the full-time in-home caregiver to a fully and permanently mentally or physically disabled child who is common to the parties.
- That the obligee is permanently mentally or physically disabled and unable to provide for his or her own support, either partially or fully.

If the obligor continues to work beyond the noticed retirement date and earns active gross income of more than 50 percent of the 3 year average preretirement active gross income, the

court must extend durational alimony to the end of its previously-ordered termination or the point at which the obligor reduces his or her active gross income to less than 50 percent.

The term "active gross income" generally means income from active work or self-employment and excludes investment and other passive income. Specifically, the bill defines "active gross income" as:

> Salary, wages, bonuses, commissions, allowances, overtime, tips, and other similar payments and business income from self-employment, partnership, close corporations, independent contracts, and other similar sources. For purposes of this definition, "business income" means gross receipts minus ordinary and necessary expenses required to produce income and requires that such business income be derived in a way that meets any of the material participation tests outlined in the Internal Revenue Service's Publication 925 (2020), Passive Activity and At-Risk Rules.

If a spouse has reached the Social Security full retirement age at the time of the final adjudication of the petition for dissolution of marriage, that spouse may not be ordered to pay any form of alimony to the other spouse unless the other spouse has not yet reached the minimum age to receive any Social Security retirement benefits, and one of these apply:

- The other spouse would, based on the outcome of the dissolution, have income less than 130 percent of the federal poverty guidelines for a one-person household;[38]
- The party seeking alimony is the full-time caregiver to a fully and permanently mentally or physically disabled child who is common to the parties; or
- The party is permanently and mentally or physically disabled and as a result thereof is unable to provide for his or her own support, whether partially or fully.

Retirement - Modification of an Existing Award of Alimony

Within the 12 months prior to a planned retirement, an obligor may file a notice of retirement and intent to terminate alimony. A copy must be personally served on the obligee or his or her attorney. The obligee has 20 days from service to object to the retirement. Any of the following are grounds for objection:

- That the obligee's income after the modification or termination would be less than 130 percent of the federal poverty guidelines for a one-person household, as published by the United States Department of Health and Human Services, based on the obligee's income and investable assets, including any retirement assets from which the obligee can access income without incurring early withdrawal penalties.
- That the modification or termination is a violation of the terms of a marital settlement agreement between the parties because the marital settlement agreement either does not allow for modification or termination of the alimony award or the proposed reduction in alimony does not comply with applicable terms for modification or termination of alimony specified in the agreement.

[38] The 2022 HHS Poverty Guideline for a one-person household is $13,590. https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines. 130% of that figure is $17,667. The guidelines are adjusted annually.

- That the obligee is the full-time in-home caregiver to a fully and permanently mentally or physically disabled child who is common to the parties.
- That the obligee is permanently mentally or physically disabled and unable to provide for his or her own support, either partially or fully.

If any of these conditions exist, the court must make written findings and must consider the following factors when deciding whether to reduce the length or amount of alimony:

- The duration of the marriage.
- The financial resources of the obligee, comparing them to those distributed at divorce and in light of how the obligee has managed those assets.
- The obligee's current assets and available sources of income, including retirement accounts not subject to a tax penalty for early withdrawal.[39]
- The effort and sacrifices of time and leisure that would be necessary for the obligor to continue to provide such alimony.
- Consideration of the presumption that the obligor has a right to retire when attaining full retirement age as per the Social Security Administration.
- The obligor's age and health.
- The terms of a marital settlement, if any, that govern modification of alimony.

Unless the obligee objects and the court rules in favor of the obligee:

- Durational alimony is decreased by 25 percent starting on the later of one year after the notice of intent to retire was filed or the date that the obligor reaches 65 years of age.
- Durational alimony is decreased an additional 25 percent (of the initial amount) each year thereafter until termination after 4 years.
- However, if the obligor continues to work beyond the Social Security full retirement age, and in so working earns more than 50 percent of the 3-year average preretirement active gross income, the court may extend the length of alimony until the obligor reduces his or her active gross income below the 50 percent threshold.

Alternatively, an obligor may seek court permission to retire earlier than age 65 and terminate alimony if that is reasonable for his or her profession or line of work. An obligor who is past the Social Security full retirement age may also petition the court for a reasonable retirement. The petition may be filed up to 12 months before the anticipated retirement. If the court finds the retirement to be reasonable, the court must allow the retirement and thereby terminate alimony, unless it finds and puts in writing cause not to allow the retirement. In determining whether the retirement is reasonable, the court must consider these factors:

- The obligor's age and health.
- The obligor's motivation for retirement.
- The obligor's profession or line of work and the typical retirement age for that profession or line of work.
- The impact that a termination or reduction of alimony would have on the obligee, considering assets of the obligee, income generated by such assets, retirement assets from

[39] "Generally, the amounts an individual withdraws from an IRA or retirement plan before reaching age 59½ are called "early" or "premature" distributions. Individuals must pay an additional 10% early withdrawal tax unless an exception applies." https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-tax-on-early-distributions (last viewed Feb. 23, 2022). The IRS recognizes 18 exceptions to the early withdrawal tax.

which the obligee can access income without incurring early withdrawal penalties, and the obligee's role in the depletion or conservation of any assets.

The bill provides that new receipt of any Social Security, disability, or retirement payments by an obligee is considered a substantial change in circumstances that would allow the obligor to seek modification of alimony.

The bill further provides that agreements on alimony payments, whether voluntary or pursuant to a court order, which allow for modification or termination of alimony are considered agreements that are expressly modifiable or eligible for termination once the specified condition is met.

Modification or Termination of Alimony Based on a Supportive Relationship

The bill expands the qualification for the filing of a petition to modify or terminate alimony based on a supportive relationship to include the right to file the petition regarding a past relationship happening up to 180 days prior to filing the petition. If the court finds that a supportive relationship existed, the court may order equitable reimbursement of past alimony that was paid.

The bill provides that, upon proof that a supportive relationship, the obligee has the burden of proof to show that alimony should not be reduced or terminated. Thus, the bill effectively creates a presumption that alimony should be reduced or terminated if the obligee is involved in a supportive relationship.

The bill requires that a court make written findings regarding each of the factors regarding whether a supportive relationship exists.

The bill provides that supportive relationship of the obligor is not actionable. Remarriage or cohabitation by the obligor is not grounds for either party to petition for modification of alimony.

Bifurcation of Dissolution Case

Applicable to a petition for dissolution of marriage filed on or after July 1, 2022, the bill creates a statutory right to bifurcation of a dissolution of marriage case. Either party may request bifurcation if more than two years have elapsed since the respondent spouse was served with a summons. Unless the other party shows that irreparable harm will result from granting a final judgment of dissolution of marriage, the court must grant the motion. Once granted, the court will enter a final judgment of dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues.

Before granting the final dissolution reserving jurisdiction, if the court has not already done so, the court must enter temporary orders necessary to protect the parties and their children, which orders remain effective until all other issues can be adjudicated by the court.

Effective Dates

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, 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:

Indeterminate. CS/SB 1796 may reduce litigation costs by making alimony awards more predictable.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

At lines 248-256 the bill redefines the terms in years of a short-term marriage, a moderate-term marriage, and a long-term marriage. However, the bill also repeals all reference to short-term, moderate-term and long-term in statute (see lines 288, 289, 413, 415, and 418). Because the changed terms are not used in the amended law, lines 248-256 could be removed from the bill without impacting the effect of the bill.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 61.046, 61.08, 61.14, and 61.19.

IX. Additional Information:

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

CS by Judiciary on January 24, 2022:
The committee substitute removes a reference to "involuntary combat-related disability benefits" as an exception to income of a party; removes the priorities of the remaining types of income; removes the ability to agree to permanent alimony; repeals current law allowing evidence of adultery; removes new limit on rehabilitative alimony of one-half of the durational alimony limit; replaces references to "medically needy" in favor of "permanently disabled"; removes statutory prohibition on court considering the income and assets of a new spouse of the obligor; changes bifurcation period from one year to two years; and makes numerous technical, grammar and style changes.

B. Amendments:

Barcode 144186 by Appropriations on February 28, 2022:
The amendment provides that:

- Timesharing with minor children is changed by creation of a presumption in favor of equal timesharing between parents;
- A noncustodial parent's move to within 50 miles of a child's primary residence is a substantial change in circumstances;
- Clarifies the minimum age at which one may file a notice of retirement; and
- If the obligee would be left with the inability to meet the obligee's basic needs and necessities of life, including, but not limited to, housing, utilities, food, and transportation, the obligee shall have 20 days after the date of service of the notice to request the court to enter findings.

(WITH TITLE AMENDMENT)

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: RS	.	
02/28/2022	.	
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	.	

The Committee on Appropriations (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete lines 316 - 625

and insert:

combination of the other forms of alimony, is insufficient.

(b) The amount of durational alimony is the amount determined to be the obligee's reasonable need or an amount not to exceed 35 percent of the difference between the parties' net incomes, whichever amount is less.

(c) In determining the length of an award of durational



alimony, the court shall reduce the length of an award of durational alimony for the length of time during which the obligor made temporary support payments to the obligee, either voluntarily or pursuant to a court order, after the date of filing of a petition for dissolution of marriage.

(d) In determining the extent to which alimony should be granted because a supportive relationship exists or has existed between the party seeking alimony and another person who is not related by consanguinity or affinity at any time since 180 days before the filing of the petition of dissolution of marriage, the court shall consider all relevant factors presented concerning the nature and extent of the supportive relationship in question. The burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists. If a supportive relationship is proven to exist, the burden shifts to the obligee to disprove by a preponderance of the evidence that the court should deny or reduce the initial award of alimony. The court must make written findings of fact concerning the circumstances of the supportive relationship, including, but not limited to, the factors set forth in s. 61.14(1)(b)2.

(e) In the event that the obligor reaches full retirement age as determined by the Social Security Administration, so long as the obligor is older than 55 years of age, or the customary retirement age for his or her profession before the end of the durational period indicated by paragraph (a), the durational alimony shall end on such retirement date if all of the following conditions are met:

1. The obligor files a notice of retirement and intent to

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terminate alimony with the court and personally serves the alimony recipient and his or her last known attorney of record, if such attorney is still practicing in the same county, at least 1 year before the date that the obligor's retirement is intended to become effective.

2. The obligee has not contested the notice of retirement and intent to terminate alimony according to the factors specified in s. 61.14(12)(b) or the court has determined that such factors do not apply. If the court makes any of the findings specified in s. 61.14(12)(b), the court must consider and make written findings regarding the factors listed in s. 61.14(12)(c) to determine whether to extend the length of the alimony award as set forth in s. 61.08(8)(a).

However, if the obligor continues to work beyond his or her retirement age as provided under this paragraph and earns active gross income of more than 50 percent of the obligor's average preretirement annual active gross income for the 3 years preceding his or her retirement age, the court may extend alimony until the durational limitations established in this subsection have been satisfied or the obligor retires and reduces his or her active gross income below the 50 percent threshold established in this paragraph.

(9)(a) A party against whom alimony is sought who has attained his or her full retirement age as determined by the Social Security Administration before the adjudication of the petition for dissolution of marriage may not be ordered to pay bridge-the-gap, rehabilitative, or durational alimony, unless the court determines that:


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1. As a result of the dissolution of marriage, the party seeking alimony would have an income of less than 130 percent of the federal poverty guidelines for a one-person household, as published by the United States Department of Health and Human Services, based on the income and investable assets available after the dissolution is final, including any retirement assets from which the obligee can access income without incurring early withdrawal penalties;

2. The party seeking alimony would be left with the inability to meet his or her basic needs and necessities of life, including, but not limited to, housing, utilities, food, and transportation; or

3. The party seeking alimony is the full-time in-home caregiver to a fully and permanently mentally or physically disabled child who is common to the parties, or the party is permanently and mentally or physically disabled and unable to provide for his or her own support, either partially or fully.

(b) However, if the obligor continues to work beyond his or her retirement age as provided under this subsection and earns active gross income of more than 50 percent of the obligor's average preretirement annual active gross income for the 3 years preceding his or her retirement age, the court may award durational alimony until the durational limitations established in subsection (8) have been satisfied or the obligor retires and reduces his or her active gross income below the 50 percent threshold established in this paragraph.

(10) Notwithstanding any other law, alimony may not be awarded to a party who has a monthly net income that is equal to or more than the other party's monthly net income.

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(11) Social security retirement benefits may not be imputed to the obligor as demonstrated by a social security retirement benefits entitlement letter unless those benefits are actually being paid.

(12) If the obligee alleges that a physical disability has impaired his or her capability to earn income, the obligee must have qualified for benefits under the Social Security Administration Disability Insurance Program or, in the event the obligee is not eligible for the program, must demonstrate that his or her disability meets the disability qualification standards of the Social Security Administration Disability Insurance Program.

~~(8) Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage. Permanent alimony may be awarded following a marriage of long duration if such an award is appropriate upon consideration of the factors set forth in subsection (2), following a marriage of moderate duration if such an award is appropriate based upon clear and convincing evidence after consideration of the factors set forth in subsection (2), or following a marriage of short duration if there are written findings of exceptional circumstances. In awarding permanent alimony, the court shall include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties. An award of permanent alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award may be modified or~~


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~~terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14.~~

~~(9) The award of alimony may not leave the payor with significantly less net income than the net income of the recipient unless there are written findings of exceptional circumstances.~~

(13)(a) ~~(10)(a)~~ With respect to any order requiring the payment of alimony entered on or after January 1, 1985, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall direct in the order that the payments of alimony be made through the appropriate depository as provided in s. 61.181.

(b) With respect to any order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance~~,~~ on or after that date~~,~~ of one or both parties before the court having jurisdiction for the purpose of modifying or enforcing the order or in any other proceeding related to the order~~,~~ or upon the application of either party, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall modify the terms of the order as necessary to direct that payments of alimony be made through the appropriate depository as provided in s. 61.181.

(c) If there is no minor child, alimony payments need not be directed through the depository.

(d)1. If there is a minor child of the parties and both parties so request, the court may order that alimony payments need not be directed through the depository. In this case, the order of support must ~~shall~~ provide, or be deemed to provide,

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that either party may subsequently apply to the depository to require that payments be made through the depository. The court shall provide a copy of the order to the depository.

2. If ~~the provisions of~~ subparagraph 1. applies ~~apply~~, either party may subsequently file with the depository an affidavit alleging default or arrearages in payment and stating that the party wishes to initiate participation in the depository program. The party shall provide copies of the affidavit to the court and the other party or parties. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be directed to the depository.

3. In IV-D cases, the IV-D agency has ~~shall have~~ the same rights as the obligee in requesting that payments be made through the depository.

(14) The court shall apply this section to all petitions for dissolution of marriage which have not been adjudicated before July 1, 2022, and to any petitions for dissolution of marriage filed on or after July 1, 2022.

Section 3. Paragraph (c) of subsection (2) and subsection (3) of section 61.13, Florida Statutes, are amended to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(2)

(c) The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, except that modification of a parenting plan



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and time-sharing schedule requires a showing of a substantial, material, and unanticipated change of circumstances.

1. It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. Unless otherwise provided in this section or agreed to by the parties, there is a presumption that equal time-sharing of a minor child is in the best interests of the minor child who is common to the parties ~~Except as otherwise provided in this paragraph, there is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule~~ when creating or modifying the parenting plan of the child.

2. The court shall order that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. The following evidence creates a rebuttable presumption of detriment to the child:

a. A parent has been convicted of a misdemeanor of the first degree or higher involving domestic violence, as defined in s. 741.28 and chapter 775;

b. A parent meets the criteria of s. 39.806(1)(d); or

c. A parent has been convicted of or had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., and at the time of the offense:

(I) The parent was 18 years of age or older.

(II) The victim was under 18 years of age or the parent believed the victim to be under 18 years of age.


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If the presumption is not rebutted after the convicted parent is advised by the court that the presumption exists, shared parental responsibility, including time-sharing with the child, and decisions made regarding the child, may not be granted to the convicted parent. However, the convicted parent is not relieved of any obligation to provide financial support. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make such arrangements for time-sharing as specified in the parenting plan as will best protect the child or abused spouse from further harm. Whether or not there is a conviction of any offense of domestic violence or child abuse or the existence of an injunction for protection against domestic violence, the court shall consider evidence of domestic violence or child abuse as evidence of detriment to the child.

3. In ordering shared parental responsibility, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child’s welfare or may divide those responsibilities between the parties based on the best interests of the child. Areas of responsibility may include education, health care, and any other responsibilities that the court finds unique to a particular family.

4. The court shall order sole parental responsibility for a minor child to one parent, with or without time-sharing with the other parent if it is in the best interests of the minor child.

5. There is a rebuttable presumption against granting time-sharing with a minor child if a parent has been convicted of or



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had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., and at the time of the offense:

a. The parent was 18 years of age or older.

b. The victim was under 18 years of age or the parent believed the victim to be under 18 years of age.

A parent may rebut the presumption upon a specific finding in writing by the court that the parent poses no significant risk of harm to the child and that time-sharing is in the best interests of the minor child. If the presumption is rebutted, the court shall consider all time-sharing factors in subsection (3) when developing a time-sharing schedule.

6. Access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, may not be denied to either parent. Full rights under this subparagraph apply to either parent unless a court order specifically revokes these rights, including any restrictions on these rights as provided in a domestic violence injunction. A parent having rights under this subparagraph has the same rights upon request as to form, substance, and manner of access as are available to the other parent of a child, including, without limitation, the right to in-person communication with medical, dental, and education providers.

(3) For purposes of establishing or modifying parental responsibility and creating, developing, approving, or modifying a parenting plan, including a time-sharing schedule, which governs each parent’s relationship with his or her minor child and the relationship between each parent with regard to his or her minor child, the best interest of the child shall be the

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primary consideration. A determination of parental responsibility, a parenting plan, or a time-sharing schedule may not be modified without a showing of a substantial, material, and unanticipated change in circumstances and a determination that the modification is in the best interests of the child. For purposes of the modification of a parenting plan and time-sharing schedule, a parent's permanent relocation to a residence within 50 miles of the primary residence of the child is presumed to be a substantial, material, and unanticipated change in circumstances. Determination of the best interests of the child shall be made by evaluating all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that family, including, but not limited to:

(a) The demonstrated capacity and disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required.

(b) The anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.

(c) The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent.

(d) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

(e) The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the


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parenting plan. This factor does not create a presumption for or against relocation of either parent with a child.

(f) The moral fitness of the parents.

(g) The mental and physical health of the parents.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

(j) The demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child, including, but not limited to, the child’s friends, teachers, medical care providers, daily activities, and favorite things.

(k) The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime.

(l) The demonstrated capacity of each parent to communicate with and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.

(m) Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, regardless of whether a prior or pending action relating to those issues has been brought. If the court accepts evidence of prior or pending actions regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect, the court must specifically acknowledge in writing that such evidence was



considered when evaluating the best interests of the child.

(n) Evidence that either parent has knowingly provided false information to the court regarding any prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect.

(o) The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before the institution of litigation and during the pending litigation, including the extent to which parenting responsibilities were undertaken by third parties.

(p) The demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities.

(q) The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.

(r) The capacity and disposition of each parent to protect the child from the ongoing litigation as demonstrated by not discussing the litigation with the child, not sharing documents or electronic media related to the litigation with the child, and refraining from disparaging comments about the other parent to the child.

(s) The developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs.

(t) Any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule.

Section 4. Paragraph (b) of subsection (1) of section

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61.14, Florida Statutes, is amended, and paragraph (c) is added to subsection (11) of that section, and subsections (12), (13), and (14) are added to that section, to read:

61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders.—

(1)

(b)1. The court may reduce or terminate an award of alimony or order reimbursement to the obligor for any amount the court determines is equitable upon specific written findings by the court that since the granting of a divorce and the award of alimony, a supportive relationship exists or ~~has~~ existed between the obligee and another ~~a~~ person at any time during the 180 days before the filing of a petition for modification of alimony ~~with whom the obligee resides~~. On the issue of whether alimony should be reduced or terminated under this paragraph, the burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists or existed. If a supportive relationship is proven to exist or have existed, the burden shifts to the obligee to disprove, by a preponderance of the evidence, that the court should terminate an existing award of alimony.

2. In determining the extent to which ~~whether~~ an existing award of alimony should be reduced or terminated because of an alleged supportive relationship between an obligee and a person who is not related by consanguinity or affinity ~~and with whom the obligee resides~~, the court must make written findings of fact concerning the nature and the extent of the supportive relationship in question and the circumstances of the supportive relationship, including, but not limited to, the following


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factors ~~shall elicit the nature and extent of the relationship in question. The court shall give consideration, without limitation, to circumstances, including, but not limited to, the following, in determining the relationship of an obligee to another person~~:

a. The extent to which the obligee and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as "my husband" or "my wife," or otherwise conducting themselves in a manner that evidences a permanent supportive relationship.

b. The period of time that the obligee has resided with the other person in a permanent place of abode.

c. The extent to which the obligee and the other person have pooled their assets or income or otherwise exhibited financial interdependence.

d. The extent to which the obligee or the other person has supported the other, in whole or in part.

e. The extent to which the obligee or the other person has performed valuable services for the other.

f. The extent to which the obligee or the other person has performed valuable services for the other's company or employer.

g. Whether the obligee and the other person have worked together to create or enhance anything of value.

h. Whether the obligee and the other person have jointly contributed to the purchase of any real or personal property.

i. Evidence in support of a claim that the obligee and the other person have an express agreement regarding property sharing or support.



j. Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support.

k. Whether the obligee and the other person have provided support to the children of one another, regardless of any legal duty to do so.

3. This paragraph does not abrogate the requirement that every marriage in this state be solemnized under a license, does not recognize a common law marriage as valid, and does not recognize a de facto marriage. This paragraph recognizes only that relationships do exist that provide economic support equivalent to a marriage and that alimony terminable on remarriage may be reduced or terminated upon the establishment of equivalent equitable circumstances as described in this paragraph. The existence of a conjugal relationship, though it may be relevant to the nature and extent of the relationship, is not necessary for the application of the provisions of this paragraph.

(11)

(c) An obligor's subsequent remarriage or cohabitation does not constitute a basis for either party to seek a modification of an alimony award.

(12)(a) Up to 12 months before seeking to terminate alimony as provided under this section, an obligor may file a notice of retirement and intent to terminate alimony with the court and shall personally serve the obligee and his or her last known attorney of record, if such attorney is still practicing in the same county, with such notice.

(b) The obligee shall have 20 days after the date of



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service of the notice to request the court to enter findings that as of the date of filing of the notice:

1. The reduction or termination of alimony would result in any of the following:

a. The obligee's income would be less than 130 percent of the federal poverty guidelines for a one-person household, as published by the United States Department of Health and Human Services, based on the obligee's income and investable assets, including any retirement assets from which the obligee can access income without incurring early withdrawal penalties.

b. The obligee would be left with the inability to meet the obligee's basic needs and necessities of life, including, but not limited to, housing, utilities, food, and transportation.

c. A violation of the terms of the marital settlement agreement between the parties because the marital settlement agreement either does not allow for modification or termination of the alimony award or the proposed reduction in alimony does not comply with applicable terms for modification of alimony specified in the agreement;

2. The obligee is the full-time in-home caregiver to a fully and permanently mentally or physically disabled child who is common to the parties; or

3. The obligee is permanently mentally or physically disabled and unable to provide for his or her own support, either partially or fully.

(c) If the court makes any of the findings specified in paragraph (b), the court must consider and make written findings regarding the following factors when deciding whether to reduce either the amount or duration of alimony:

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1. The duration of the marriage.

2. The financial resources of the obligee, including the nonmarital and marital assets and liabilities distributed to the obligee, as well as the obligee's role in conserving or depleting the marital assets distributed at the dissolution of marriage.

3. The sources of income available to the obligee, including income available to the obligee through investments of any asset, including retirement assets from which the obligee can access income without incurring early withdrawal penalties.

4. The effort and sacrifices of time and leisure necessary for the obligor to continue to provide such alimony and consideration of the presumption that the obligor has a right to retire when attaining full retirement age as per the Social Security Administration.

5. The age and health of the obligor.

6. The terms of the marital settlement agreement between the parties which govern modification of alimony.

(d) If the court does not make any of the findings specified in paragraph (b), the alimony award amount shall decrease by 25 percent on the date the obligor reaches 65 years of age or 1 year after the date on which the notice of retirement and intent to terminate alimony is filed, whichever occurs later, and shall continue to decrease by 25 percent each year thereafter until the date the obligor reaches 68 years of age or 4 years after the date on which the notice is filed, whichever occurs later, at which time alimony shall terminate.

(e) Notwithstanding paragraphs (a)-(d), if the obligor continues to work beyond full retirement age as determined by

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the United States Social Security Administration or beyond the reasonable retirement age for his or her profession or line of work as determined in paragraph (f), whichever occurs earlier, and earns active gross income of more than 50 percent of the obligor's average preretirement annual active gross income for the 3 years preceding his or her retirement age, actual retirement date, or reasonable retirement age, as applicable, the court may extend alimony until the obligor retires and reduces his or her active gross income below the 50 percent active gross income threshold established under this paragraph.

(f) If an obligor, so long as he or she is older than 55 years of age, seeks to retire at an age that is

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

And the title is amended as follows:

Between lines 61 and 62

insert:

s. 61.13, F.S.; creating a presumption that equal time-sharing is in the best interest of the child, with exceptions; creating a presumption for purposes of modifying a parenting plan or time-sharing schedule; amending

836940

LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
02/28/2022	.	
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The Committee on Appropriations (Gruters) recommended the following:

Senate Amendment to Amendment (797882)

Delete lines 32 - 36
and insert:
(e) In the event that the obligor reaches full retirement age as determined by the Social Security Administration or the customary retirement age for his or her profession before the end of the durational period indicated by paragraph (a), and has reached at least 55 years of age, the durational

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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/28/2022	.	
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The Committee on Appropriations (Gruters) recommended the following:

Senate Substitute for Amendment (797882) (with title amendment)

Delete lines 316 - 625
and insert:
combination of the other forms of alimony, is insufficient.

(b) The amount of durational alimony is the amount determined to be the obligee's reasonable need or an amount not to exceed 35 percent of the difference between the parties' net incomes, whichever amount is less.



(c) In determining the length of an award of durational alimony, the court shall reduce the length of an award of durational alimony for the length of time during which the obligor made temporary support payments to the obligee, either voluntarily or pursuant to a court order, after the date of filing of a petition for dissolution of marriage.

(d) In determining the extent to which alimony should be granted because a supportive relationship exists or has existed between the party seeking alimony and another person who is not related by consanguinity or affinity at any time since 180 days before the filing of the petition of dissolution of marriage, the court shall consider all relevant factors presented concerning the nature and extent of the supportive relationship in question. The burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists. If a supportive relationship is proven to exist, the burden shifts to the obligee to disprove by a preponderance of the evidence that the court should deny or reduce the initial award of alimony. The court must make written findings of fact concerning the circumstances of the supportive relationship, including, but not limited to, the factors set forth in s. 61.14(1)(b)2.

(e) In the event that the obligor reaches full retirement age as determined by the Social Security Administration before the end of the durational period indicated by paragraph (a), and has reached at least 65 years of age, the durational alimony shall end on such retirement date if all of the following conditions are met:

1. The obligor files a notice of retirement and intent to

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terminate alimony with the court and personally serves the alimony recipient and his or her last known attorney of record, if such attorney is still practicing in the same county, at least 1 year before the date that the obligor's retirement is intended to become effective.

2. The obligee has not contested the notice of retirement and intent to terminate alimony according to the factors specified in s. 61.14(12)(b) or the court has determined that such factors do not apply. If the court makes any of the findings specified in s. 61.14(12)(b), the court must consider and make written findings regarding the factors listed in s. 61.14(12)(c) to determine whether to extend the length of the alimony award as set forth in s. 61.08(8)(a).

However, if the obligor continues to work beyond his or her retirement age as provided under this paragraph and earns active gross income of more than 50 percent of the obligor's average preretirement annual active gross income for the 3 years preceding his or her retirement age, the court may extend alimony until the durational limitations established in this subsection have been satisfied or the obligor retires and reduces his or her active gross income below the 50 percent threshold established in this paragraph.

(9)(a) A party against whom alimony is sought who has attained his or her full retirement age as determined by the Social Security Administration before the adjudication of the petition for dissolution of marriage may not be ordered to pay bridge-the-gap, rehabilitative, or durational alimony, unless the court determines that:

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1. As a result of the dissolution of marriage, the party seeking alimony would have an income of less than 130 percent of the federal poverty guidelines for a one-person household, as published by the United States Department of Health and Human Services, based on the income and investable assets available after the dissolution is final, including any retirement assets from which the obligee can access income without incurring early withdrawal penalties;

2. The party seeking alimony would be left with the inability to meet his or her basic needs and necessities of life, including, but not limited to, housing, utilities, food, and transportation; or

3. The party seeking alimony is the full-time in-home caregiver to a fully and permanently mentally or physically disabled child who is common to the parties, or the party is permanently and mentally or physically disabled and unable to provide for his or her own support, either partially or fully.

(b) However, if the obligor continues to work beyond his or her retirement age as provided under this subsection and earns active gross income of more than 50 percent of the obligor's average preretirement annual active gross income for the 3 years preceding his or her retirement age, the court may award durational alimony until the durational limitations established in subsection (8) have been satisfied or the obligor retires and reduces his or her active gross income below the 50 percent threshold established in this paragraph.

(10) Notwithstanding any other law, alimony may not be awarded to a party who has a monthly net income that is equal to or more than the other party's monthly net income.

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(11) Social security retirement benefits may not be imputed to the obligor as demonstrated by a social security retirement benefits entitlement letter unless those benefits are actually being paid.

(12) If the obligee alleges that a physical disability has impaired his or her capability to earn income, the obligee must have qualified for benefits under the Social Security Administration Disability Insurance Program or, in the event the obligee is not eligible for the program, must demonstrate that his or her disability meets the disability qualification standards of the Social Security Administration Disability Insurance Program.

~~(8) Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage. Permanent alimony may be awarded following a marriage of long duration if such an award is appropriate upon consideration of the factors set forth in subsection (2), following a marriage of moderate duration if such an award is appropriate based upon clear and convincing evidence after consideration of the factors set forth in subsection (2), or following a marriage of short duration if there are written findings of exceptional circumstances. In awarding permanent alimony, the court shall include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties. An award of permanent alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award may be modified or~~


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~~terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14.~~

~~(9) The award of alimony may not leave the payor with significantly less net income than the net income of the recipient unless there are written findings of exceptional circumstances.~~

(13)(a) ~~(10)(a)~~ With respect to any order requiring the payment of alimony entered on or after January 1, 1985, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall direct in the order that the payments of alimony be made through the appropriate depository as provided in s. 61.181.

(b) With respect to any order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance~~,~~ on or after that date~~,~~ of one or both parties before the court having jurisdiction for the purpose of modifying or enforcing the order or in any other proceeding related to the order~~,~~ or upon the application of either party, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall modify the terms of the order as necessary to direct that payments of alimony be made through the appropriate depository as provided in s. 61.181.

(c) If there is no minor child, alimony payments need not be directed through the depository.

(d)1. If there is a minor child of the parties and both parties so request, the court may order that alimony payments need not be directed through the depository. In this case, the order of support must ~~shall~~ provide, or be deemed to provide,

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that either party may subsequently apply to the depository to require that payments be made through the depository. The court shall provide a copy of the order to the depository.

2. If ~~the provisions of~~ subparagraph 1. applies ~~apply~~, either party may subsequently file with the depository an affidavit alleging default or arrearages in payment and stating that the party wishes to initiate participation in the depository program. The party shall provide copies of the affidavit to the court and the other party or parties. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be directed to the depository.

3. In IV-D cases, the IV-D agency has ~~shall have~~ the same rights as the obligee in requesting that payments be made through the depository.

(14) The court shall apply this section to all petitions for dissolution of marriage which have not been adjudicated before July 1, 2022, and to any petitions for dissolution of marriage filed on or after July 1, 2022.

Section 3. Paragraph (c) of subsection (2) and subsection (3) of section 61.13, Florida Statutes, are amended to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(2)

(c) The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, except that modification of a parenting plan



and time-sharing schedule requires a showing of a substantial, material, and unanticipated change of circumstances.

1. It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. Unless otherwise provided in this section or agreed to by the parties, there is a presumption that equal time-sharing of a minor child is in the best interests of the minor child who is common to the parties ~~Except as otherwise provided in this paragraph, there is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule~~ when creating or modifying the parenting plan of the child.

2. The court shall order that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. The following evidence creates a rebuttable presumption of detriment to the child:

a. A parent has been convicted of a misdemeanor of the first degree or higher involving domestic violence, as defined in s. 741.28 and chapter 775;

b. A parent meets the criteria of s. 39.806(1)(d); or

c. A parent has been convicted of or had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., and at the time of the offense:

(I) The parent was 18 years of age or older.

(II) The victim was under 18 years of age or the parent believed the victim to be under 18 years of age.

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If the presumption is not rebutted after the convicted parent is advised by the court that the presumption exists, shared parental responsibility, including time-sharing with the child, and decisions made regarding the child, may not be granted to the convicted parent. However, the convicted parent is not relieved of any obligation to provide financial support. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make such arrangements for time-sharing as specified in the parenting plan as will best protect the child or abused spouse from further harm. Whether or not there is a conviction of any offense of domestic violence or child abuse or the existence of an injunction for protection against domestic violence, the court shall consider evidence of domestic violence or child abuse as evidence of detriment to the child.

3. In ordering shared parental responsibility, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child’s welfare or may divide those responsibilities between the parties based on the best interests of the child. Areas of responsibility may include education, health care, and any other responsibilities that the court finds unique to a particular family.

4. The court shall order sole parental responsibility for a minor child to one parent, with or without time-sharing with the other parent if it is in the best interests of the minor child.

5. There is a rebuttable presumption against granting time-sharing with a minor child if a parent has been convicted of or



had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., and at the time of the offense:

a. The parent was 18 years of age or older.

b. The victim was under 18 years of age or the parent believed the victim to be under 18 years of age.

A parent may rebut the presumption upon a specific finding in writing by the court that the parent poses no significant risk of harm to the child and that time-sharing is in the best interests of the minor child. If the presumption is rebutted, the court shall consider all time-sharing factors in subsection (3) when developing a time-sharing schedule.

6. Access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, may not be denied to either parent. Full rights under this subparagraph apply to either parent unless a court order specifically revokes these rights, including any restrictions on these rights as provided in a domestic violence injunction. A parent having rights under this subparagraph has the same rights upon request as to form, substance, and manner of access as are available to the other parent of a child, including, without limitation, the right to in-person communication with medical, dental, and education providers.

(3) For purposes of establishing or modifying parental responsibility and creating, developing, approving, or modifying a parenting plan, including a time-sharing schedule, which governs each parent’s relationship with his or her minor child and the relationship between each parent with regard to his or her minor child, the best interest of the child shall be the

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primary consideration. A determination of parental responsibility, a parenting plan, or a time-sharing schedule may not be modified without a showing of a substantial, material, and unanticipated change in circumstances and a determination that the modification is in the best interests of the child. For purposes of the modification of a parenting plan and time-sharing schedule, a parent's permanent relocation to a residence within 50 miles of the primary residence of the child is presumed to be a substantial, material, and unanticipated change in circumstances. Determination of the best interests of the child shall be made by evaluating all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that family, including, but not limited to:

(a) The demonstrated capacity and disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required.

(b) The anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.

(c) The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent.

(d) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

(e) The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the



parenting plan. This factor does not create a presumption for or against relocation of either parent with a child.

(f) The moral fitness of the parents.

(g) The mental and physical health of the parents.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

(j) The demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child, including, but not limited to, the child's friends, teachers, medical care providers, daily activities, and favorite things.

(k) The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime.

(l) The demonstrated capacity of each parent to communicate with and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.

(m) Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, regardless of whether a prior or pending action relating to those issues has been brought. If the court accepts evidence of prior or pending actions regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect, the court must specifically acknowledge in writing that such evidence was



considered when evaluating the best interests of the child.

(n) Evidence that either parent has knowingly provided false information to the court regarding any prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect.

(o) The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before the institution of litigation and during the pending litigation, including the extent to which parenting responsibilities were undertaken by third parties.

(p) The demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities.

(q) The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.

(r) The capacity and disposition of each parent to protect the child from the ongoing litigation as demonstrated by not discussing the litigation with the child, not sharing documents or electronic media related to the litigation with the child, and refraining from disparaging comments about the other parent to the child.

(s) The developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs.

(t) Any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule.

Section 4. Paragraph (b) of subsection (1) of section

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61.14, Florida Statutes, is amended, and paragraph (c) is added to subsection (11) of that section, and subsections (12), (13), and (14) are added to that section, to read:

61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders.—

(1)

(b)1. The court may reduce or terminate an award of alimony or order reimbursement to the obligor for any amount the court determines is equitable upon specific written findings by the court that since the granting of a divorce and the award of alimony, a supportive relationship exists or ~~has~~ existed between the obligee and another ~~a~~ person at any time during the 180 days before the filing of a petition for modification of alimony ~~with whom the obligee resides~~. On the issue of whether alimony should be reduced or terminated under this paragraph, the burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists or existed. If a supportive relationship is proven to exist or have existed, the burden shifts to the obligee to disprove, by a preponderance of the evidence, that the court should terminate an existing award of alimony.

2. In determining the extent to which ~~whether~~ an existing award of alimony should be reduced or terminated because of an alleged supportive relationship between an obligee and a person who is not related by consanguinity or affinity ~~and with whom the obligee resides~~, the court must make written findings of fact concerning the nature and the extent of the supportive relationship in question and the circumstances of the supportive relationship, including, but not limited to, the following



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factors ~~shall elicit the nature and extent of the relationship in question. The court shall give consideration, without limitation, to circumstances, including, but not limited to, the following, in determining the relationship of an obligee to another person~~:

a. The extent to which the obligee and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as "my husband" or "my wife," or otherwise conducting themselves in a manner that evidences a permanent supportive relationship.

b. The period of time that the obligee has resided with the other person in a permanent place of abode.

c. The extent to which the obligee and the other person have pooled their assets or income or otherwise exhibited financial interdependence.

d. The extent to which the obligee or the other person has supported the other, in whole or in part.

e. The extent to which the obligee or the other person has performed valuable services for the other.

f. The extent to which the obligee or the other person has performed valuable services for the other's company or employer.

g. Whether the obligee and the other person have worked together to create or enhance anything of value.

h. Whether the obligee and the other person have jointly contributed to the purchase of any real or personal property.

i. Evidence in support of a claim that the obligee and the other person have an express agreement regarding property sharing or support.

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j. Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support.

k. Whether the obligee and the other person have provided support to the children of one another, regardless of any legal duty to do so.

3. This paragraph does not abrogate the requirement that every marriage in this state be solemnized under a license, does not recognize a common law marriage as valid, and does not recognize a de facto marriage. This paragraph recognizes only that relationships do exist that provide economic support equivalent to a marriage and that alimony terminable on remarriage may be reduced or terminated upon the establishment of equivalent equitable circumstances as described in this paragraph. The existence of a conjugal relationship, though it may be relevant to the nature and extent of the relationship, is not necessary for the application of the provisions of this paragraph.

(11)

(c) An obligor's subsequent remarriage or cohabitation does not constitute a basis for either party to seek a modification of an alimony award.

(12)(a) Up to 12 months before seeking to terminate alimony as provided under this section, an obligor may file a notice of retirement and intent to terminate alimony with the court and shall personally serve the obligee and his or her last known attorney of record, if such attorney is still practicing in the same county, with such notice.

(b) The obligee shall have 20 days after the date of

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service of the notice to request the court to enter findings that as of the date of filing of the notice:

1. The reduction or termination of alimony would result in any of the following:

a. The obligee's income would be less than 130 percent of the federal poverty guidelines for a one-person household, as published by the United States Department of Health and Human Services, based on the obligee's income and investable assets, including any retirement assets from which the obligee can access income without incurring early withdrawal penalties.

b. The obligee would be left with the inability to meet the obligee's basic needs and necessities of life, including, but not limited to, housing, utilities, food, and transportation.

c. A violation of the terms of the marital settlement agreement between the parties because the marital settlement agreement either does not allow for modification or termination of the alimony award or the proposed reduction in alimony does not comply with applicable terms for modification of alimony specified in the agreement;

2. The obligee is the full-time in-home caregiver to a fully and permanently mentally or physically disabled child who is common to the parties; or

3. The obligee is permanently mentally or physically disabled and unable to provide for his or her own support, either partially or fully.

(c) If the court makes any of the findings specified in paragraph (b), the court must consider and make written findings regarding the following factors when deciding whether to reduce either the amount or duration of alimony:

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1. The duration of the marriage.

2. The financial resources of the obligee, including the nonmarital and marital assets and liabilities distributed to the obligee, as well as the obligee's role in conserving or depleting the marital assets distributed at the dissolution of marriage.

3. The sources of income available to the obligee, including income available to the obligee through investments of any asset, including retirement assets from which the obligee can access income without incurring early withdrawal penalties.

4. The effort and sacrifices of time and leisure necessary for the obligor to continue to provide such alimony and consideration of the presumption that the obligor has a right to retire when attaining full retirement age as per the Social Security Administration.

5. The age and health of the obligor.

6. The terms of the marital settlement agreement between the parties which govern modification of alimony.

(d) If the court does not make any of the findings specified in paragraph (b), the alimony award amount shall decrease by 25 percent on the date the obligor reaches 65 years of age or 1 year after the date on which the notice of retirement and intent to terminate alimony is filed, whichever occurs later, and shall continue to decrease by 25 percent each year thereafter until the date the obligor reaches 68 years of age or 4 years after the date on which the notice is filed, whichever occurs later, at which time alimony shall terminate.

(e) Notwithstanding paragraphs (a)-(d), if the obligor continues to work beyond full retirement age as determined by

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the United States Social Security Administration or beyond the reasonable retirement age for his or her profession or line of work as determined in paragraph (f), whichever occurs earlier, and earns active gross income of more than 50 percent of the obligor's average preretirement annual active gross income for the 3 years preceding his or her retirement age, actual retirement date, or reasonable retirement age, as applicable, the court may extend alimony until the obligor retires and reduces his or her active gross income below the 50 percent active gross income threshold established under this paragraph.

(f) If an obligor, so long as he or she is older than 65 years of age, seeks to retire at an age that is

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

And the title is amended as follows:

Between lines 61 and 62

insert:

s. 61.13, F.S.; creating a presumption that equal time-sharing is in the best interest of the child, with exceptions; creating a presumption for purposes of modifying a parenting plan or time-sharing schedule; amending

855360

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/28/2022	.	
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The Committee on Appropriations (Pizzo) recommended the following:

Senate Amendment to Substitute Amendment (144186)

Delete lines 171 - 174
and insert:
(14) The court shall apply this section to all initial petitions for dissolution of marriage filed on or after July 1, 2022.
(15) The court may not apply this section to any award of alimony established before July 1, 2022.

By the Committee on Judiciary; and Senators Gruters, Rodriguez, Hooper, and Diaz

A bill to be entitled

An act relating to dissolution of marriage; amending s. 61.046, F.S.; defining the term "active gross income"; revising the definition of the term "income"; amending s. 61.08, F.S.; defining terms; requiring the court to make certain written findings in its awards of alimony; limiting the court's ability to award a combination of forms of alimony to only certain circumstances; removing the court's ability to consider adultery of either spouse in determining the amount of an alimony award; requiring the court to make certain findings in writing; revising factors that the court must consider in determining the proper type and amount of alimony; removing the court's ability to order an obligor to purchase or maintain a life insurance policy or other instrument to secure an alimony award; authorizing a party to whom the court has awarded alimony to purchase or maintain a life insurance policy on the obligor's life to protect an award of alimony; requiring the obligor to cooperate in the process of procuring the life insurance policy; modifying certain rebuttable presumptions related to the duration of a marriage for purposes of determining alimony; prohibiting the length of an award of rehabilitative alimony from exceeding a specified timeframe; revising a provision authorizing the modification of rehabilitative alimony upon completion of the rehabilitative plan to include a certain condition; revising provisions related to durational

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

alimony; prohibiting the length of an award of durational alimony from exceeding specified timeframes; authorizing the court to extend durational alimony under certain circumstances; specifying what constitutes the length of a marriage for the purpose of determining durational alimony; requiring the court to make certain written findings when awarding durational alimony; providing a formula for the calculation of durational alimony; requiring the court to reduce the length of an award of durational alimony based on certain payments made by the obligor; requiring the court to consider specified factors when determining an alimony award involving the existence of a supportive relationship between the obligee and another person; providing for the burden of proof in such determinations; requiring the court to make certain written findings in such determinations ; providing for the termination of a durational alimony award upon retirement of the obligor under certain circumstances; providing an exception; providing that a party who has reached retirement age before adjudication of a petition for dissolution of marriage may not be ordered to pay alimony; providing exceptions; establishing that alimony may not be awarded to a party who has a certain monthly net income; prohibiting social security retirement benefits from being imputed to the obligor, with an exception; requiring an obligee to meet certain requirements if he or she alleges that a physical

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

disability has impaired his or her ability to earn income; removing the court's ability to grant permanent alimony; providing applicability; amending s. 61.14, F.S.; authorizing the court to order an obligee to reimburse alimony payments to the obligor under certain circumstances; specifying a timeframe for the court to consider a supportive relationship between the obligee and another person for purposes of reducing or terminating an award of alimony or ordering reimbursement of alimony payments; providing for the burden of proof in such determinations; revising factors the court may consider when determining whether a supportive relationship exists or existed between the obligee and another person; requiring the court to make its findings related to such factors in writing; providing that an obligor's subsequent remarriage or cohabitation is not a basis for modification of alimony; authorizing an obligor to file a notice of retirement and intent to terminate alimony within a specified timeframe before such retirement; providing notice and response requirements; requiring the court to make written findings regarding specified factors when deciding whether to reduce the amount or duration of alimony; providing for the reduction and termination of alimony within specified timeframes under certain circumstances; authorizing the court to extend durational alimony beyond an obligor's full retirement age or reasonable retirement age for his or her

profession or line of work under certain circumstances, notwithstanding its other findings; authorizing the court to terminate an alimony obligation if the obligor retires at a reasonable age for his or her profession or line of work or is past his or her full retirement age; requiring the court to consider certain factors in determining whether the obligor's retirement is reasonable; authorizing an obligor to prospectively file a petition for modification or termination of alimony, effective upon his or her retirement; requiring a court to modify or terminate an alimony award upon retirement of the obligor, with an exception; providing that certain benefits of the obligee constitute a change in circumstances for which an obligor may seek modification of an alimony award; providing that certain agreements on alimony payments are considered expressly modifiable or eligible for termination under certain circumstances; amending s. 61.19, F.S.; requiring the court to grant, upon request of either party, a final judgment of dissolution of marriage and reserve jurisdiction to adjudicate other substantive issues, under certain circumstances; requiring the court to enter temporary orders necessary to protect the parties and their children, if any; providing that such temporary orders are effective until all other issues are adjudicated by the court; providing applicability; providing an effective date.

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

Section 1. Present subsections (1) through (23) of section 61.046, Florida Statutes, are redesignated as subsections (2) through (24), respectively, a new subsection (1) is added to that section, and present subsection (8) of that section is amended, to read:

61.046 Definitions.—As used in this chapter, the term:

(1) "Active gross income" means salary, wages, bonuses, commissions, allowances, overtime, tips, and other similar payments and business income from self-employment, partnership, close corporations, independent contracts, and other similar sources. For purposes of this definition, "business income" means gross receipts minus ordinary and necessary expenses required to produce income and requires that such business income be derived in a way that meets any of the material participation tests outlined in the Internal Revenue Service's Publication 925 (2020), Passive Activity and At-Risk Rules.

(9)~~(8)~~ "Income" means any form of payment to an individual, regardless of source, including, but not limited to,~~:~~ wages, salary, commissions and bonuses, compensation as an independent contractor, worker's compensation, disability benefits, annuity and retirement benefits, pensions, dividends, interest, royalties, trust distributions ~~trusts~~, and any other payments, made by any person, private entity, federal or state government, or any unit of local government. United States Department of Veterans Affairs disability benefits and reemployment assistance or unemployment compensation, as defined in chapter 443, are excluded from this definition of income except for purposes of

establishing an amount of support.

Section 2. Section 61.08, Florida Statutes, is amended to read:

61.08 Alimony.—

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

(a) "Alimony" means a court-ordered or voluntary payment of support by one spouse to the other spouse. The term includes any voluntary payment made after the date of filing an order for maintenance, spousal support, temporary support, or separate support when the payment is not intended for the benefit of a child in common.

(b) "Gross income" means gross income as determined in accordance with s. 61.30(2).

(c) "Net income" means income that is determined by subtracting allowable deductions from gross income. For purposes of this section, allowable deductions include any of the following:

1. Federal, state, or local income tax deductions, adjusted for actual filing status and allowable dependents, and income tax liabilities.

2. Federal insurance contributions or self-employment tax.

3. Mandatory union dues.

4. Mandatory retirement payments.

5. Health insurance payments, excluding payments for coverage of a minor child.

6. Court-ordered support for other children which is actually paid.

7. Spousal support paid pursuant to a court order from a previous marriage.

(2)(a) In a proceeding for dissolution of marriage, the court may grant alimony to either party in the form of~~, which alimony may be~~ bridge-the-gap, rehabilitative, or durational alimony, or a ~~permanent in nature or any~~ combination of these forms of alimony. In an ~~any~~ award of alimony, the court may order periodic payments, ~~or~~ payments in lump sum, or both.

(b) The court shall make written findings regarding the basis for awarding a combination of forms of alimony, including the type of alimony and the length of time for which the alimony is awarded. The court may award a combination of forms of alimony only to provide greater economic assistance in order to allow the recipient to achieve rehabilitation.

(c) ~~The court may consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded.~~ In all dissolution actions, the court shall include written findings of fact relative to the factors provided ~~enumerated~~ in subsection (3) ~~(2)~~ supporting the ~~an~~ award or denial of alimony.

(3)~~(2)~~ In determining whether to award alimony or maintenance, the court shall first make a specific, written factual determination as to whether the ~~either~~ party seeking alimony or maintenance has an actual need for it ~~alimony or maintenance~~ and whether the other ~~either~~ party has the ability to pay alimony or maintenance. If the court finds that the ~~a~~ party seeking alimony or maintenance has a need for it ~~alimony or maintenance~~ and that the other party has the ability to pay alimony or maintenance, then in determining the proper type and amount of alimony or maintenance under subsections (5)-(9) ~~(5)-(8)~~, the court must ~~shall~~ consider all relevant factors,

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including, but not limited to:

(a) The standard of living established during the marriage, including the needs and necessities of life for each party after the dissolution of marriage, taking into consideration the presumption that both parties will have a lower standard of living after the dissolution of marriage than their standard of living during the marriage. This presumption may be overcome by a preponderance of the evidence.

(b) The duration of the marriage.

(c) The age and the physical and emotional condition of each party.

(d) The financial resources of each party, including the nonmarital and the marital assets and liabilities distributed to each.

(e) The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.

(f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of either ~~the other~~ party.

(g) The responsibilities each party will have with regard to any minor children whom the parties ~~they~~ have in common.

(h) The tax treatment and consequences to both parties of an ~~any~~ alimony award~~, including the designation of all or a portion of the payment as a nontaxable, nondeductible payment~~.

(i) All sources of income available to either party,

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including income available to either party through investments of any asset held by that party.

(j) Any other factor necessary for ~~to do~~ equity and justice between the parties, if such factor is specifically identified in the award with findings of fact justifying the application of such factor.

(4)~~(3)~~ To the extent necessary to protect an award of alimony, the obligee may ~~court may order any party who is ordered to pay alimony to~~ purchase or maintain a life insurance policy on the obligor's life in an amount adequate to ~~or a bond, or to otherwise~~ secure such alimony award. If the obligee purchases a life insurance policy, the obligor must cooperate in the process of procuring the issuance and underwriting of the life insurance policy ~~with any other assets which may be suitable for that purpose~~.

(5)~~(4)~~ For purposes of determining alimony, there is a rebuttable presumption that a short-term marriage is a marriage having a duration of less than 10 ~~7~~ years, a moderate-term marriage is a marriage having a duration between 10 ~~of greater than 7 years~~ and 20 ~~but less than 17~~ years, and a long-term marriage is a marriage having a duration of 20 ~~17~~ years or longer ~~greater~~. The length of a marriage is the period of time from the date of marriage until the date of filing of an action for dissolution of marriage.

(6)~~(5)~~ Bridge-the-gap alimony may be awarded to assist a party by providing support to allow the party to make a transition from being married to being single. Bridge-the-gap alimony is designed to assist a party with legitimate identifiable short-term needs, and the length of an award of

bridge-the-gap alimony may not exceed 2 years. An award of bridge-the-gap alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award of bridge-the-gap alimony is ~~shall~~ not ~~be~~ modifiable in amount or duration.

(7)(a)~~(6)(a)~~ Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through either:

1. The redevelopment of previous skills or credentials; or

2. The acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.

(b) In order to award rehabilitative alimony, there must be a specific and defined rehabilitative plan which shall be included as a part of any order awarding rehabilitative alimony.

(c) The length of an award of rehabilitative alimony may not exceed 5 years.

(d) An award of rehabilitative alimony may be modified or terminated in accordance with s. 61.14 based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan if the plan is completed before the length of the award of rehabilitative alimony expires.

(8)(a)~~(7)~~ Durational alimony may be awarded ~~when permanent periodic alimony is inappropriate. The purpose of durational alimony is~~ to provide a party with economic assistance for a set period of time ~~following a marriage of short or moderate duration or following a marriage of long duration if there is no ongoing need for support on a permanent basis~~. An award of

durational alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. The amount of an award of durational alimony may be modified or terminated based upon a substantial change in circumstances in accordance with s. 61.14. Durational alimony may not be awarded following a marriage lasting fewer than 3 years. ~~However,~~ The length of an award of durational alimony may not ~~be modified except under exceptional circumstances and may not~~ exceed 50 percent of the length of a ~~the~~ marriage lasting between 3 and 10 years, 60 percent of the length of a marriage lasting between 10 and 20 years, or 75 percent of the length of a marriage lasting 20 years or longer. However, if the party seeking alimony is either permanently mentally or physically disabled and unable to provide for his or her own support, either partially or fully, or is the full-time in-home caregiver to a fully and permanently mentally or physically disabled child who is common to the parties, the court may extend durational alimony beyond the thresholds established in this subsection based on the duration of the marriage until the death of the child or until the court determines that there is no longer a need for durational alimony. For purposes of this subsection, the length of a marriage is the period of time beginning on the date of marriage and ending on the date an action for dissolution of marriage is filed. When awarding durational alimony, the court must make written findings that an award of another type of alimony, or a combination of the other forms of alimony, is not appropriate.

(b) The amount of durational alimony is the amount determined to be the obligee's reasonable need or an amount not to exceed 35 percent of the difference between the parties' net

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incomes, whichever amount is less.

(c) In determining the length of an award of durational alimony, the court shall reduce the length of an award of durational alimony for the length of time during which the obligor made temporary support payments to the obligee, either voluntarily or pursuant to a court order, after the date of filing of a petition for dissolution of marriage.

(d) In determining the extent to which alimony should be granted because a supportive relationship exists or has existed between the party seeking alimony and another person who is not related by consanguinity or affinity at any time since 180 days before the filing of the petition of dissolution of marriage, the court shall consider all relevant factors presented concerning the nature and extent of the supportive relationship in question. The burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists. If a supportive relationship is proven to exist, the burden shifts to the obligee to disprove by a preponderance of the evidence that the court should deny or reduce the initial award of alimony. The court must make written finding of fact concerning the circumstances of the supportive relationship, including, but not limited to, the factors set forth in s. 61.14(1)(b)2.

(e) In the event that the obligor reaches full retirement age as determined by the Social Security Administration or the customary retirement age for his or her profession before the end of the durational period indicated by paragraph (a), the durational alimony shall end on such retirement date if all of the following conditions are met:

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1. The obligor files a notice of retirement and intent to terminate alimony with the court and personally serves the alimony recipient or his or her last known attorney of record at least 1 year before the date that the obligor's retirement is intended to become effective.

2. The obligee has not contested the notice of retirement and intent to terminate alimony according to the factors specified in s. 61.14(12)(b) or the court has determined that such factors do not apply. If the court makes any of the findings specified in s. 61.14(12)(b), the court must consider and make written findings regarding the factors listed in s. 61.14(12)(c) to determine whether to extend the length of the alimony award as set forth in s. 61.08(8)(a).

However, if the obligor continues to work beyond his or her retirement age as provided under this paragraph and earns active gross income of more than 50 percent of the obligor's average preretirement annual active gross income for the 3 years preceding his or her retirement age, the court may extend alimony until the durational limitations established in this subsection have been satisfied or the obligor retires and reduces his or her active gross income below the 50 percent threshold established in this paragraph.

(9) A party against whom alimony is sought who has attained his or her full retirement age as determined by the Social Security Administration before the adjudication of the petition for dissolution of marriage may not be ordered to pay bridge-the-gap, rehabilitative, or durational alimony, unless the court determines that:

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(a) The party seeking alimony has not reached the age to qualify for any social security retirement benefits; and

(b)1. As a result of the dissolution of marriage, the party seeking alimony would have an income less than 130 percent of the federal poverty guidelines for a one-person household, as published by the United States Department of Health and Human Services, based on the income and investable assets available after the dissolution is final, including any retirement assets from which the obligee can access income without incurring early withdrawal penalties; or

2. The party seeking alimony is the full-time in-home caregiver to a fully and permanently mentally or physically disabled child who is common to the parties, or the party is permanently and mentally or physically disabled and unable to provide for his or her own support, either partially or fully.

(10) Notwithstanding any other law, alimony may not be awarded to a party who has a monthly net income that is equal to or more than the other party's monthly net income.

(11) Social security retirement benefits may not be imputed to the obligor as demonstrated by a social security retirement benefits entitlement letter unless those benefits are actually being paid.

(12) If the obligee alleges that a physical disability has impaired his or her capability to earn income, the obligee must have qualified for benefits under the Social Security Administration Disability Insurance Program or, in the event the obligee is not eligible for the program, must demonstrate that his or her disability meets the disability qualification standards of the Social Security Administration Disability

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Insurance Program.

~~(8) Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage. Permanent alimony may be awarded following a marriage of long duration if such an award is appropriate upon consideration of the factors set forth in subsection (2), following a marriage of moderate duration if such an award is appropriate based upon clear and convincing evidence after consideration of the factors set forth in subsection (2), or following a marriage of short duration if there are written findings of exceptional circumstances. In awarding permanent alimony, the court shall include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties. An award of permanent alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award may be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14.~~

~~(9) The award of alimony may not leave the payor with significantly less net income than the net income of the recipient unless there are written findings of exceptional circumstances.~~

(13)(a) ~~(10)(a)~~ With respect to any order requiring the payment of alimony entered on or after January 1, 1985, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall direct in the order that the payments of alimony

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be made through the appropriate depository as provided in s. 61.181.

(b) With respect to any order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance~~,~~ on or after that date~~,~~ of one or both parties before the court having jurisdiction for the purpose of modifying or enforcing the order or in any other proceeding related to the order~~,~~ or upon the application of either party, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall modify the terms of the order as necessary to direct that payments of alimony be made through the appropriate depository as provided in s. 61.181.

(c) If there is no minor child, alimony payments need not be directed through the depository.

(d)1. If there is a minor child of the parties and both parties so request, the court may order that alimony payments need not be directed through the depository. In this case, the order of support must ~~shall~~ provide, or be deemed to provide, that either party may subsequently apply to the depository to require that payments be made through the depository. The court shall provide a copy of the order to the depository.

2. If ~~the provisions of~~ subparagraph 1. applies ~~apply~~, either party may subsequently file with the depository an affidavit alleging default or arrearages in payment and stating that the party wishes to initiate participation in the depository program. The party shall provide copies of the affidavit to the court and the other party or parties. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be directed to the

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depository.

3. In IV-D cases, the IV-D agency has ~~shall have~~ the same rights as the obligee in requesting that payments be made through the depository.

(14) The court shall apply this section to all petitions for dissolution of marriage which have not been adjudicated before July 1, 2022, and to any petitions for dissolution of marriage filed on or after July 1, 2022.

Section 3. Paragraph (b) of subsection (1) of section 61.14, Florida Statutes, is amended, and paragraph (c) is added to subsection (11) and subsections (12), (13), and (14) are added to that section, to read:

61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders.—

(1)

(b)1. The court may reduce or terminate an award of alimony or order reimbursement to the obligor for any amount the court determines is equitable upon specific written findings by the court that since the granting of a divorce and the award of alimony, a supportive relationship exists or ~~has~~ existed between the obligee and another ~~a~~ person at any time during the 180 days before the filing of a petition for modification of alimony ~~with whom the obligee resides~~. On the issue of whether alimony should be reduced or terminated under this paragraph, the burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists or existed. If a supportive relationship is proven to exist or have existed, the burden shifts to the obligee to disprove, by a preponderance of the evidence, that the court should terminate an existing award of

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alimony.

2. In determining the extent to which ~~whether~~ an existing award of alimony should be reduced or terminated because of an alleged supportive relationship between an obligee and a person who is not related by consanguinity or affinity ~~and with whom the obligee resides~~, the court must make written findings of fact concerning the nature and the extent of the supportive relationship in question and the circumstances of the supportive relationship, including, but not limited to, the following factors ~~shall elicit the nature and extent of the relationship in question. The court shall give consideration, without limitation, to circumstances, including, but not limited to, the following, in determining the relationship of an obligee to another person~~:

a. The extent to which the obligee and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as "my husband" or "my wife," or otherwise conducting themselves in a manner that evidences a permanent supportive relationship.

b. The period of time that the obligee has resided with the other person in a permanent place of abode.

c. The extent to which the obligee and the other person have pooled their assets or income or otherwise exhibited financial interdependence.

d. The extent to which the obligee or the other person has supported the other, in whole or in part.

e. The extent to which the obligee or the other person has performed valuable services for the other.

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f. The extent to which the obligee or the other person has performed valuable services for the other's company or employer.

g. Whether the obligee and the other person have worked together to create or enhance anything of value.

h. Whether the obligee and the other person have jointly contributed to the purchase of any real or personal property.

i. Evidence in support of a claim that the obligee and the other person have an express agreement regarding property sharing or support.

j. Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support.

k. Whether the obligee and the other person have provided support to the children of one another, regardless of any legal duty to do so.

3. This paragraph does not abrogate the requirement that every marriage in this state be solemnized under a license, does not recognize a common law marriage as valid, and does not recognize a de facto marriage. This paragraph recognizes only that relationships do exist that provide economic support equivalent to a marriage and that alimony terminable on remarriage may be reduced or terminated upon the establishment of equivalent equitable circumstances as described in this paragraph. The existence of a conjugal relationship, though it may be relevant to the nature and extent of the relationship, is not necessary for the application of the provisions of this paragraph.

(11)

(c) An obligor's subsequent remarriage or cohabitation does

not constitute a basis for either party to seek a modification of an alimony award.

(12)(a) Up to 12 months before seeking to terminate alimony as provided under this section, an obligor may file a notice of retirement and intent to terminate alimony with the court and shall personally serve the obligee or his or her last known attorney of record with such notice.

(b) The obligee shall have 20 days after the date of service of the notice to request the court to enter findings that as of the date of filing of the notice:

1. The reduction or termination of alimony would result in any of the following:

a. The obligee's income would be less than 130 percent of the federal poverty guidelines for a one-person household, as published by the United States Department of Health and Human Services, based on the obligee's income and investable assets, including any retirement assets from which the obligee can access income without incurring early withdrawal penalties.

b. A violation of the terms of the marital settlement agreement between the parties because the marital settlement agreement either does not allow for modification or termination of the alimony award or the proposed reduction in alimony does not comply with applicable terms for modification of alimony specified in the agreement;

2. The obligee is the full-time in-home caregiver to a fully and permanently mentally or physically disabled child who is common to the parties; or

3. The obligee is permanently mentally or physically disabled and unable to provide for his or her own support,

either partially or fully.

(c) If the court makes any of the findings specified in paragraph (b), the court must consider and make written findings regarding the following factors when deciding whether to reduce either the amount or duration of alimony:

1. The duration of the marriage.

2. The financial resources of the obligee, including the nonmarital and marital assets and liabilities distributed to the obligee, as well as the obligee's role in conserving or depleting the marital assets distributed at the dissolution of marriage.

3. The sources of income available to the obligee, including income available to the obligee through investments of any asset, including retirement assets from which the obligee can access income without incurring early withdrawal penalties.

4. The effort and sacrifices of time and leisure necessary for the obligor to continue to provide such alimony and consideration of the presumption that the obligor has a right to retire when attaining full retirement age as per the Social Security Administration.

5. The age and health of the obligor.

6. The terms of the marital settlement agreement between the parties which govern modification of alimony.

(d) If the court does not make any of the findings specified in paragraph (b), the alimony award amount shall decrease by 25 percent on the date the obligor reaches 65 years of age or 1 year after the date on which the notice of retirement and intent to terminate alimony is filed, whichever occurs later, and shall continue to decrease by 25 percent each

year thereafter until the date the obligor reaches 68 years of age or 4 years after the date on which the notice is filed, whichever occurs later, at which time alimony shall terminate.

(e) Notwithstanding paragraphs (a)-(d), if the obligor continues to work beyond full retirement age as determined by the United States Social Security Administration or beyond the reasonable retirement age for his or her profession or line of work as determined in paragraph (f), whichever occurs earlier, and earns active gross income of more than 50 percent of the obligor's average preretirement annual active gross income for the 3 years preceding his or her retirement age, actual retirement date, or reasonable retirement age, as applicable, the court may extend alimony until the obligor retires and reduces his or her active gross income below the 50 percent active gross income threshold established under this paragraph.

(f) If an obligor seeks to retire at an age that is reasonable for his or her profession or line of work, but before he or she reaches 65 years of age, or if the obligor is past his or her full retirement age as determined by the Social Security Administration, the court may terminate an alimony award if it determines that the obligor's retirement is reasonable. In determining whether the obligor's retirement is reasonable, the court shall consider all of the following:

1. The obligor's age and health.

2. The obligor's motivation for retirement.

3. The obligor's profession or line of work and the typical retirement age for that profession or line of work.

4. The impact that a termination or reduction of alimony would have on the obligee. In determining the impact, the court

must consider any assets accumulated or received by the obligee since the final judgment of dissolution of marriage, including any income generated by such assets and retirement assets from which the obligee can access income without incurring early withdrawal penalties, and the obligee's role in the depletion or conservation of any assets.

(g) Up to 12 months before the obligor's anticipated retirement under paragraph (f), the obligor may file a petition to modify or terminate the alimony award, effective upon his or her actual retirement date. The court shall modify or terminate the alimony award after the obligor's retirement unless the court makes written findings of fact under paragraph (f) that the obligor's retirement is not reasonable.

(13) Any amount of social security or disability benefits or retirement payments received by an obligee subsequent to an initial award of alimony constitutes a change in circumstances for which an obligor may seek modification of an alimony award.

(14) Agreements on alimony payments, voluntary or pursuant to a court order, which allow for modification or termination of alimony by virtue of either party reaching a certain age, income, or other threshold, or agreements that establish a limited period of time after which alimony is modifiable, are considered agreements that are expressly modifiable or eligible for termination for purposes of this section once the specified condition is met.

Section 4. Section 61.19, Florida Statutes, is amended to read:

61.19 Entry of judgment of dissolution of marriage; ~~,~~ delay period; separate adjudication of issues.—

(1) A ~~No~~ final judgment of dissolution of marriage may not be entered until at least 20 days have elapsed from the date of filing the original petition for dissolution of marriage, ~~,~~ but the court, on a showing that injustice would result from this delay, may enter a final judgment of dissolution of marriage at an earlier date.

(2) If more than 2 years have elapsed after the date of service of the original petition for dissolution of marriage, absent a showing by either party that irreparable harm will result from granting a final judgment of dissolution of marriage, the court shall, upon request of either party, grant a final judgment of dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues. Before granting the judgment, the court shall enter temporary orders necessary to protect the parties and their children, if any, which orders remain effective until all other issues are adjudicated by the court. This subsection applies to all petitions for dissolution of marriage filed on or after July 1, 2022.

Section 5. The court shall apply this act to any action pending on or after July 1, 2022.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/28/2022	.	
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The Committee on Appropriations (Gruters) recommended the following:

Senate Substitute for Amendment (797882) (with title amendment)

Delete lines 316 - 625
and insert:
combination of the other forms of alimony, is insufficient.

(b) The amount of durational alimony is the amount determined to be the obligee's reasonable need or an amount not to exceed 35 percent of the difference between the parties' net incomes, whichever amount is less.



(c) In determining the length of an award of durational alimony, the court shall reduce the length of an award of durational alimony for the length of time during which the obligor made temporary support payments to the obligee, either voluntarily or pursuant to a court order, after the date of filing of a petition for dissolution of marriage.

(d) In determining the extent to which alimony should be granted because a supportive relationship exists or has existed between the party seeking alimony and another person who is not related by consanguinity or affinity at any time since 180 days before the filing of the petition of dissolution of marriage, the court shall consider all relevant factors presented concerning the nature and extent of the supportive relationship in question. The burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists. If a supportive relationship is proven to exist, the burden shifts to the obligee to disprove by a preponderance of the evidence that the court should deny or reduce the initial award of alimony. The court must make written findings of fact concerning the circumstances of the supportive relationship, including, but not limited to, the factors set forth in s. 61.14(1)(b)2.

(e) In the event that the obligor reaches full retirement age as determined by the Social Security Administration before the end of the durational period indicated by paragraph (a), and has reached at least 65 years of age, the durational alimony shall end on such retirement date if all of the following conditions are met:

1. The obligor files a notice of retirement and intent to

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terminate alimony with the court and personally serves the alimony recipient and his or her last known attorney of record, if such attorney is still practicing in the same county, at least 1 year before the date that the obligor's retirement is intended to become effective.

2. The obligee has not contested the notice of retirement and intent to terminate alimony according to the factors specified in s. 61.14(12)(b) or the court has determined that such factors do not apply. If the court makes any of the findings specified in s. 61.14(12)(b), the court must consider and make written findings regarding the factors listed in s. 61.14(12)(c) to determine whether to extend the length of the alimony award as set forth in s. 61.08(8)(a).

However, if the obligor continues to work beyond his or her retirement age as provided under this paragraph and earns active gross income of more than 50 percent of the obligor's average preretirement annual active gross income for the 3 years preceding his or her retirement age, the court may extend alimony until the durational limitations established in this subsection have been satisfied or the obligor retires and reduces his or her active gross income below the 50 percent threshold established in this paragraph.

(9)(a) A party against whom alimony is sought who has attained his or her full retirement age as determined by the Social Security Administration before the adjudication of the petition for dissolution of marriage may not be ordered to pay bridge-the-gap, rehabilitative, or durational alimony, unless the court determines that:

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1. As a result of the dissolution of marriage, the party seeking alimony would have an income of less than 130 percent of the federal poverty guidelines for a one-person household, as published by the United States Department of Health and Human Services, based on the income and investable assets available after the dissolution is final, including any retirement assets from which the obligee can access income without incurring early withdrawal penalties;

2. The party seeking alimony would be left with the inability to meet his or her basic needs and necessities of life, including, but not limited to, housing, utilities, food, and transportation; or

3. The party seeking alimony is the full-time in-home caregiver to a fully and permanently mentally or physically disabled child who is common to the parties, or the party is permanently and mentally or physically disabled and unable to provide for his or her own support, either partially or fully.

(b) However, if the obligor continues to work beyond his or her retirement age as provided under this subsection and earns active gross income of more than 50 percent of the obligor's average preretirement annual active gross income for the 3 years preceding his or her retirement age, the court may award durational alimony until the durational limitations established in subsection (8) have been satisfied or the obligor retires and reduces his or her active gross income below the 50 percent threshold established in this paragraph.

(10) Notwithstanding any other law, alimony may not be awarded to a party who has a monthly net income that is equal to or more than the other party's monthly net income.

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(11) Social security retirement benefits may not be imputed to the obligor as demonstrated by a social security retirement benefits entitlement letter unless those benefits are actually being paid.

(12) If the obligee alleges that a physical disability has impaired his or her capability to earn income, the obligee must have qualified for benefits under the Social Security Administration Disability Insurance Program or, in the event the obligee is not eligible for the program, must demonstrate that his or her disability meets the disability qualification standards of the Social Security Administration Disability Insurance Program.

~~(8) Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage. Permanent alimony may be awarded following a marriage of long duration if such an award is appropriate upon consideration of the factors set forth in subsection (2), following a marriage of moderate duration if such an award is appropriate based upon clear and convincing evidence after consideration of the factors set forth in subsection (2), or following a marriage of short duration if there are written findings of exceptional circumstances. In awarding permanent alimony, the court shall include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties. An award of permanent alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award may be modified or~~


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~~terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14.~~

~~(9) The award of alimony may not leave the payor with significantly less net income than the net income of the recipient unless there are written findings of exceptional circumstances.~~

(13)(a) ~~(10)(a)~~ With respect to any order requiring the payment of alimony entered on or after January 1, 1985, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall direct in the order that the payments of alimony be made through the appropriate depository as provided in s. 61.181.

(b) With respect to any order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance~~,~~ on or after that date~~,~~ of one or both parties before the court having jurisdiction for the purpose of modifying or enforcing the order or in any other proceeding related to the order~~,~~ or upon the application of either party, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall modify the terms of the order as necessary to direct that payments of alimony be made through the appropriate depository as provided in s. 61.181.

(c) If there is no minor child, alimony payments need not be directed through the depository.

(d)1. If there is a minor child of the parties and both parties so request, the court may order that alimony payments need not be directed through the depository. In this case, the order of support must ~~shall~~ provide, or be deemed to provide,

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that either party may subsequently apply to the depository to require that payments be made through the depository. The court shall provide a copy of the order to the depository.

2. If ~~the provisions of~~ subparagraph 1. applies ~~apply~~, either party may subsequently file with the depository an affidavit alleging default or arrearages in payment and stating that the party wishes to initiate participation in the depository program. The party shall provide copies of the affidavit to the court and the other party or parties. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be directed to the depository.

3. In IV-D cases, the IV-D agency has ~~shall have~~ the same rights as the obligee in requesting that payments be made through the depository.

(14) The court shall apply this section to all petitions for dissolution of marriage which have not been adjudicated before July 1, 2022, and to any petitions for dissolution of marriage filed on or after July 1, 2022.

Section 3. Paragraph (c) of subsection (2) and subsection (3) of section 61.13, Florida Statutes, are amended to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(2)

(c) The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, except that modification of a parenting plan



and time-sharing schedule requires a showing of a substantial, material, and unanticipated change of circumstances.

1. It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. Unless otherwise provided in this section or agreed to by the parties, there is a presumption that equal time-sharing of a minor child is in the best interests of the minor child who is common to the parties ~~Except as otherwise provided in this paragraph, there is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule~~ when creating or modifying the parenting plan of the child.

2. The court shall order that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. The following evidence creates a rebuttable presumption of detriment to the child:

a. A parent has been convicted of a misdemeanor of the first degree or higher involving domestic violence, as defined in s. 741.28 and chapter 775;

b. A parent meets the criteria of s. 39.806(1)(d); or

c. A parent has been convicted of or had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., and at the time of the offense:

(I) The parent was 18 years of age or older.

(II) The victim was under 18 years of age or the parent believed the victim to be under 18 years of age.

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If the presumption is not rebutted after the convicted parent is advised by the court that the presumption exists, shared parental responsibility, including time-sharing with the child, and decisions made regarding the child, may not be granted to the convicted parent. However, the convicted parent is not relieved of any obligation to provide financial support. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make such arrangements for time-sharing as specified in the parenting plan as will best protect the child or abused spouse from further harm. Whether or not there is a conviction of any offense of domestic violence or child abuse or the existence of an injunction for protection against domestic violence, the court shall consider evidence of domestic violence or child abuse as evidence of detriment to the child.

3. In ordering shared parental responsibility, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child’s welfare or may divide those responsibilities between the parties based on the best interests of the child. Areas of responsibility may include education, health care, and any other responsibilities that the court finds unique to a particular family.

4. The court shall order sole parental responsibility for a minor child to one parent, with or without time-sharing with the other parent if it is in the best interests of the minor child.

5. There is a rebuttable presumption against granting time-sharing with a minor child if a parent has been convicted of or



had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., and at the time of the offense:

a. The parent was 18 years of age or older.

b. The victim was under 18 years of age or the parent believed the victim to be under 18 years of age.

A parent may rebut the presumption upon a specific finding in writing by the court that the parent poses no significant risk of harm to the child and that time-sharing is in the best interests of the minor child. If the presumption is rebutted, the court shall consider all time-sharing factors in subsection (3) when developing a time-sharing schedule.

6. Access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, may not be denied to either parent. Full rights under this subparagraph apply to either parent unless a court order specifically revokes these rights, including any restrictions on these rights as provided in a domestic violence injunction. A parent having rights under this subparagraph has the same rights upon request as to form, substance, and manner of access as are available to the other parent of a child, including, without limitation, the right to in-person communication with medical, dental, and education providers.

(3) For purposes of establishing or modifying parental responsibility and creating, developing, approving, or modifying a parenting plan, including a time-sharing schedule, which governs each parent’s relationship with his or her minor child and the relationship between each parent with regard to his or her minor child, the best interest of the child shall be the

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primary consideration. A determination of parental responsibility, a parenting plan, or a time-sharing schedule may not be modified without a showing of a substantial, material, and unanticipated change in circumstances and a determination that the modification is in the best interests of the child. For purposes of the modification of a parenting plan and time-sharing schedule, a parent's permanent relocation to a residence within 50 miles of the primary residence of the child is presumed to be a substantial, material, and unanticipated change in circumstances. Determination of the best interests of the child shall be made by evaluating all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that family, including, but not limited to:

(a) The demonstrated capacity and disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required.

(b) The anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.

(c) The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent.

(d) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

(e) The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the



parenting plan. This factor does not create a presumption for or against relocation of either parent with a child.

(f) The moral fitness of the parents.

(g) The mental and physical health of the parents.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

(j) The demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child, including, but not limited to, the child's friends, teachers, medical care providers, daily activities, and favorite things.

(k) The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime.

(l) The demonstrated capacity of each parent to communicate with and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.

(m) Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, regardless of whether a prior or pending action relating to those issues has been brought. If the court accepts evidence of prior or pending actions regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect, the court must specifically acknowledge in writing that such evidence was



considered when evaluating the best interests of the child.

(n) Evidence that either parent has knowingly provided false information to the court regarding any prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect.

(o) The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before the institution of litigation and during the pending litigation, including the extent to which parenting responsibilities were undertaken by third parties.

(p) The demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities.

(q) The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.

(r) The capacity and disposition of each parent to protect the child from the ongoing litigation as demonstrated by not discussing the litigation with the child, not sharing documents or electronic media related to the litigation with the child, and refraining from disparaging comments about the other parent to the child.

(s) The developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs.

(t) Any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule.

Section 4. Paragraph (b) of subsection (1) of section

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61.14, Florida Statutes, is amended, and paragraph (c) is added to subsection (11) of that section, and subsections (12), (13), and (14) are added to that section, to read:

61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders.—

(1)

(b)1. The court may reduce or terminate an award of alimony or order reimbursement to the obligor for any amount the court determines is equitable upon specific written findings by the court that since the granting of a divorce and the award of alimony, a supportive relationship exists or ~~has~~ existed between the obligee and another ~~a~~ person at any time during the 180 days before the filing of a petition for modification of alimony ~~with whom the obligee resides~~. On the issue of whether alimony should be reduced or terminated under this paragraph, the burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists or existed. If a supportive relationship is proven to exist or have existed, the burden shifts to the obligee to disprove, by a preponderance of the evidence, that the court should terminate an existing award of alimony.

2. In determining the extent to which ~~whether~~ an existing award of alimony should be reduced or terminated because of an alleged supportive relationship between an obligee and a person who is not related by consanguinity or affinity ~~and with whom the obligee resides~~, the court must make written findings of fact concerning the nature and the extent of the supportive relationship in question and the circumstances of the supportive relationship, including, but not limited to, the following



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factors ~~shall elicit the nature and extent of the relationship in question. The court shall give consideration, without limitation, to circumstances, including, but not limited to, the following, in determining the relationship of an obligee to another person~~:

a. The extent to which the obligee and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as "my husband" or "my wife," or otherwise conducting themselves in a manner that evidences a permanent supportive relationship.

b. The period of time that the obligee has resided with the other person in a permanent place of abode.

c. The extent to which the obligee and the other person have pooled their assets or income or otherwise exhibited financial interdependence.

d. The extent to which the obligee or the other person has supported the other, in whole or in part.

e. The extent to which the obligee or the other person has performed valuable services for the other.

f. The extent to which the obligee or the other person has performed valuable services for the other's company or employer.

g. Whether the obligee and the other person have worked together to create or enhance anything of value.

h. Whether the obligee and the other person have jointly contributed to the purchase of any real or personal property.

i. Evidence in support of a claim that the obligee and the other person have an express agreement regarding property sharing or support.

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j. Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support.

k. Whether the obligee and the other person have provided support to the children of one another, regardless of any legal duty to do so.

3. This paragraph does not abrogate the requirement that every marriage in this state be solemnized under a license, does not recognize a common law marriage as valid, and does not recognize a de facto marriage. This paragraph recognizes only that relationships do exist that provide economic support equivalent to a marriage and that alimony terminable on remarriage may be reduced or terminated upon the establishment of equivalent equitable circumstances as described in this paragraph. The existence of a conjugal relationship, though it may be relevant to the nature and extent of the relationship, is not necessary for the application of the provisions of this paragraph.

(11)

(c) An obligor's subsequent remarriage or cohabitation does not constitute a basis for either party to seek a modification of an alimony award.

(12)(a) Up to 12 months before seeking to terminate alimony as provided under this section, an obligor may file a notice of retirement and intent to terminate alimony with the court and shall personally serve the obligee and his or her last known attorney of record, if such attorney is still practicing in the same county, with such notice.

(b) The obligee shall have 20 days after the date of

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service of the notice to request the court to enter findings that as of the date of filing of the notice:

1. The reduction or termination of alimony would result in any of the following:

a. The obligee's income would be less than 130 percent of the federal poverty guidelines for a one-person household, as published by the United States Department of Health and Human Services, based on the obligee's income and investable assets, including any retirement assets from which the obligee can access income without incurring early withdrawal penalties.

b. The obligee would be left with the inability to meet the obligee's basic needs and necessities of life, including, but not limited to, housing, utilities, food, and transportation.

c. A violation of the terms of the marital settlement agreement between the parties because the marital settlement agreement either does not allow for modification or termination of the alimony award or the proposed reduction in alimony does not comply with applicable terms for modification of alimony specified in the agreement;

2. The obligee is the full-time in-home caregiver to a fully and permanently mentally or physically disabled child who is common to the parties; or

3. The obligee is permanently mentally or physically disabled and unable to provide for his or her own support, either partially or fully.

(c) If the court makes any of the findings specified in paragraph (b), the court must consider and make written findings regarding the following factors when deciding whether to reduce either the amount or duration of alimony:

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1. The duration of the marriage.

2. The financial resources of the obligee, including the nonmarital and marital assets and liabilities distributed to the obligee, as well as the obligee's role in conserving or depleting the marital assets distributed at the dissolution of marriage.

3. The sources of income available to the obligee, including income available to the obligee through investments of any asset, including retirement assets from which the obligee can access income without incurring early withdrawal penalties.

4. The effort and sacrifices of time and leisure necessary for the obligor to continue to provide such alimony and consideration of the presumption that the obligor has a right to retire when attaining full retirement age as per the Social Security Administration.

5. The age and health of the obligor.

6. The terms of the marital settlement agreement between the parties which govern modification of alimony.

(d) If the court does not make any of the findings specified in paragraph (b), the alimony award amount shall decrease by 25 percent on the date the obligor reaches 65 years of age or 1 year after the date on which the notice of retirement and intent to terminate alimony is filed, whichever occurs later, and shall continue to decrease by 25 percent each year thereafter until the date the obligor reaches 68 years of age or 4 years after the date on which the notice is filed, whichever occurs later, at which time alimony shall terminate.

(e) Notwithstanding paragraphs (a)-(d), if the obligor continues to work beyond full retirement age as determined by

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the United States Social Security Administration or beyond the reasonable retirement age for his or her profession or line of work as determined in paragraph (f), whichever occurs earlier, and earns active gross income of more than 50 percent of the obligor's average preretirement annual active gross income for the 3 years preceding his or her retirement age, actual retirement date, or reasonable retirement age, as applicable, the court may extend alimony until the obligor retires and reduces his or her active gross income below the 50 percent active gross income threshold established under this paragraph.

(f) If an obligor, so long as he or she is older than 65 years of age, seeks to retire at an age that is

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

And the title is amended as follows:

Between lines 61 and 62

insert:

s. 61.13, F.S.; creating a presumption that equal time-sharing is in the best interest of the child, with exceptions; creating a presumption for purposes of modifying a parenting plan or time-sharing schedule; amending

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: January 28, 2022

I respectfully request that **Senate Bill #1796**, relating to Dissolution of Marriage, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Please let me know if you have any questions.

Sincerely,

Joe Gruters

Cc: Tim Sadberry, Staff Director
Jamie DeLoach, Deputy Staff Director
John Shettle, Deputy Staff Director
Ashley Urban, General Counsel
Alicia Weiss, Committee Administrative Assistant

File signed original with committee office

The Florida Senate

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2/28/2022
Meeting Date

Appropriations
Committee

SB1796
Bill Number or Topic

855360
Amendment Barcode (if applicable)

Name SHANNON NOVEY

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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:

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

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

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S-001 (08/10/2021)

The Florida Senate

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Committee

1796
Bill Number or Topic

855360
Amendment Barcode (if applicable)

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PLEASE CHECK ONE OF THE FOLLOWING:

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☐ I am a registered lobbyist, representing:

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Committee

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SB 1796
Bill Number or Topic

144186
Amendment Barcode (if applicable)

Name SHANNON NOVEY

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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:

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Feb 28 2022
Meeting Date

Appropriations
Committee

SB 1796
Bill Number or Topic

797882
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:

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Feb 28 2022
Meeting Date

Appropriations
Committee

SB 1796
Bill Number or Topic

836940 AA
Amendment Barcode (if applicable)

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

PLEASE CHECK ONE OF THE FOLLOWING:

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☐ I am a registered lobbyist, representing:

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

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Committee

1796
Bill Number or Topic

Amendment Barcode (if applicable)

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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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2/28/22
Meeting Date

App.
Committee

1796
Bill Number or Topic

Amendment Barcode (if applicable)

Name Marc Johnson

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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:

Florida Family Fairness

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2-28-22
Meeting Date

SB 1796
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

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City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

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02/28/2022
Meeting Date

Appropriations
Committee

SB 1796
Bill Number or Topic

Amendment Barcode (if applicable)

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City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

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Committee

1796
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: 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

APPEARANCE RECORD

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

2/28/2022
Meeting Date

Approps
Committee

1796
Bill Number or Topic

Amendment Barcode (if applicable)

Name Karen Woodall

Phone 850-321-9386

Address 509 E. Call St
Street

Tallahassee FL
City State Zip

Email fcfep@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 Center for Fiscal & Economic Policy

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

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

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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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February 28, 2022
Meeting Date

Senate Appropriations
Committee

1796 (divorce bill)
Bill Number or Topic

Amendment Barcode (if applicable)

Susan Aertker for

Name League of Women Voters-Florida

Phone 904-262-5124

Address (Susan Aertker) 10178 Foxcroft Rd W
Street

Email susaninflorida@gmail.com

Jacksonville FI 32257
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:
League of Women Voters-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

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2/28/2022
Meeting Date

Appropriations
Committee

1796
Bill Number or Topic

Amendment Barcode (if applicable)

Name ANDREA Reid

Phone 561-948-5685

Address 2101 NW Corp. Blvd Ste 315
Street

Email Areid@reidlawgroup.com

Boca Raton FL 33431
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

2/28/2022
Meeting Date

1796
Bill Number or Topic

Appropiations
Committee

4/2 KNOTT BLAG 10:30

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

Amendment Barcode (if applicable)

Name Vernon Askegard

Phone 7015410371

Address 10624 Pecan Dr
Street

Email vaskegard39@gmail.com

Fairhope | Al | 36532
City | *State* | *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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S-001 (08/10/2021)

The Florida Senate

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2/28/22
Meeting Date

Appropriations
Committee

1796
Bill Number or Topic

Amendment Barcode (if applicable)

Name Deborah Shultz Phone 813-431-3231

Address 2710 Spring Green Dr. Email dshultzmd@aol.com
Street

Lutz Fla. 33559
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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Feb 28th, 2022
Meeting Date

Appropriations
Committee

1796
Bill Number or Topic

Amendment Barcode (if applicable)

Name Alan Frisher, CDFA, Ch.FC., CLU

Phone 321-242-7526

Address 6550 N. Wickham Rd
Street

Email alan.frisher@gmail.com

Melbourne | Fl | 32940
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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02/28/2022
Meeting Date

Appropriations
Committee

SB 1796
Bill Number or Topic

Amendment Barcode (if applicable)

Name Deborah Gray

Phone Private

Address

Street

Pensacola, FL 32503
City State Zip

Email Private

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

PLEASE CHECK ONE OF THE FOLLOWING:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2-28-22
Meeting Date

SB 1796
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Camille Fiveash

Phone NA

Address NA PRIVATE
Street

Email NA PRIVATE

Milton F 32570
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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Deliver both copies of this form to
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2/28/22
Meeting Date

SB 1796
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Sonia I Delgado

Phone 619-408-5772

Address 950 E Fort King Street
Street

Email sonia.delgado@centurylink.net

Ocala FL 34471
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

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☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

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2-28-22
Meeting Date

Committee

1796 ALIMONY
Bill Number or Topic

RA FOR
Amendment Barcode (if applicable)

Name M.D. [illegible]

Phone 332-273-8[illegible]

Address [illegible]
Street

Email

[illegible] FL [illegible]
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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2/28/22
Meeting Date

Appropriations
Committee

SB 796
Bill Number or Topic

Amendment Barcode (if applicable)

Name Michael Buhler

Phone +1 305 796 4215

Address 815 Malaga Ave
Street

Email michelbuhler13@gmail.com

Coral Gables FL 33134
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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Feb 28 2022
Meeting Date

Appropriations
Committee

1796
Bill Number or Topic

Amendment Barcode (if applicable)

Name Shannon Novey

Phone 850-224-4000

Address 851 E Park Avenue
Street

Email shannonnovey@noveylaw.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:

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S-001 (08/10/2021)

The Florida Senate

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2-28-22	SB 1796
Meeting Date	Bill Number or Topic
~~Judiciary~~ Appropriations	
Committee	Amendment Barcode (if applicable)

Name Carla McAuliffe Phone 954-553-0539

Address 346 Oakridge T Email Carlamcauliffe@yahoo.com
Street

Deerfield Fl. 33442
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

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☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

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2/28/22
Meeting Date

SB 1796
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name JOHN FROMM/ARO

Phone 850 982 1910

Address 4 PORTOFINO DR 2008
Street

Email jfromm1ARO@gmail.com

PENSACOLA FL 32561
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

2/28/22	1796
Meeting Date	Bill Number or Topic
Appropriations	
Committee	Amendment Barcode (if applicable)

Name Natalie Willis Phone 561 - 346 - 9219

Address 9719 Thousand Pines Circle Email nsilgym@aol.com
Street

West Palm Beach FL 33411
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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Deliver both copies of this form to
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Feb. 28 2022
Meeting Date

~~Appropriations Com.~~
Committee

SB 1796
Bill Number or Topic

Amendment Barcode (if applicable)

Name Shelly Moxon

Phone (954) 599-0515

Address 5630 Harding St.
Street

Email ~~Shellygatehouse~~ Moxonlehman2gmail.com

Hollywood FL 33021
City State Zip

My mother's home.

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

PLEASE CHECK ONE OF THE FOLLOWING:

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Senate professional staff conducting the meeting

2-28-22
Meeting Date

SB 1796
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name George J. Smith

Phone 9042938722

Address 252 N. Bridge Creek Dr
Street

Email NoTHOMR@comcast.net

St Johns FL 32259
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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☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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2/28/22
Meeting Date

APPROPRIATIN
Committee

1796
Bill Number or Topic

Amendment Barcode (if applicable)

Name ALAN GOLLIN

Phone 772 485 6577

Address 5450 PALMETTO Ave
Street

Email lonolo@AOL.com

Fort Pierce FL 34982
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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Meeting Date

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Phone 904 234 2638

Address 7238 COOKIE RD
Street

Email Bluemist2003@ATT.NET

City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

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S-001 (08/10/2021)

The Florida Senate

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 Appropriations

BILL:	PCS/CS/SB 1874 (565284)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Banking and Insurance Committee; and Senator Boyd
SUBJECT:	Department of Financial Services
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Sanders	Betta	AEG	**Recommend: Fav/CS**
3.	Sanders	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1874 amends sections of Florida Statutes relating to the powers and duties of the Department of Financial Services (DFS). The Chief Financial Officer (CFO) is the head of the DFS. The bill, as originally filed, revises service of process requirements by providing the service of process is valid and binding upon the insurer on the date the process served on the CFO is delivered to the insurer, or the insurer has been notified by the DFS that such information has made been made available on the DFS online portal. In addition, the committee substitute provides the following additional changes:

Division of Insurance Agents and Agencies

- Adds an exemption to the examination requirements for an all-lines adjuster who has received the designation of a Certified All Lines Adjuster from Kaplan Financial Education;
- Authorizes an adjuster who holds an adjuster license and who is an unaffiliated insurance agent to obtain an adjuster appointment while maintaining his or her unaffiliated agent appointment. This will allow the adjuster to adjust claims and receive compensation;
- Limits the appointment of a public adjuster apprentice to a public adjusting firm who may appoint a public adjuster apprentice. Currently a public adjuster may also appoint an apprentice;
- Revises provisions relating to fingerprinting requirements to comply with federal law;

- Creates notice requirements for agencies that cease doing business, and creates penalties for noncompliance;
- Increases the authority of the DFS to investigate and prosecute violations committed by a licensee while licensed under ch. 626, F.S., even if the license has expired, is not renewed, or is surrendered; and
- Revises compensation for public adjusters by requiring the compensation be based on the recovery allocated to the insured for covered damage, exclusive of attorney fees and costs.

Funeral, Cemetery, and Consumer Services

- Eliminates the fee cap of $50 for a consumer transferring the burial rights from one purchaser to another and revises the licensure requirements for embalmers and funeral directors.

State Fire Marshal

- Authorizes expenditure of funds from the Firefighter Assistance Grant Program for the purchase of other equipment and tools and protective clothing and equipment compliant with certain standards;
- Revises firefighter certification requirements; and
- Revises provisions relating to the inspection of boiler rooms.

Division of Workers' Compensation

- Exempts the schedules of maximum reimbursement allowances adopted by the three-member panel from rule ratification requirements by the Legislature;
- Requires a carrier to reimburse a physician, hospital, or ambulatory surgical center at the agreed-upon contract price, or if there is no contract price, the lessor of the provider's billed charge or the maximum reimbursement allowance. Currently, the carrier must reimburse at the agreed-upon contract price or the maximum reimbursement allowance;
- Clarifies the definition of employer;
- Clarifies an employer applying for an exemption from workers' compensation coverage to provide a *valid* driver license or *valid* identification card. An applicant is also required to complete an online the FS coverage and compliance tutorial as a condition for application;
- Revises the formula for calculating coverage penalties to reduce the period subject to a penalty with exceptions;
- Provides a penalty credit for an employer who has been issued a stop-work order or an enforcement action if the employer successfully completes an online coverage and compliance tutorial;
- Extends the deadline for an employer to produce requested business records from 10 business days to 21 days before the DFS can take an administrative action;
- Requires an employer to pay any outstanding assessed payment prior to entering into a new penalty payment program with the DFS;
- Requires the carrier to send an informational brochure to the injured worker within three business days, instead of three days, after the employee or employer notifies the carrier of an injury. A carrier or its third party administrator is authorized to provide the informational brochure to an injured worker or an employer by e-mail or regular mail; and
- Revises onsite audit requirements for construction classes by requiring such annual audits if the estimated annual premium is $10,000 or more. Currently, there is no minimum threshold.

Division of Accounting and Auditing

- Amends provisions relating to the Planning and Accounting, Ledger Management system (PALM) and local government financial reporting.

Division of Rehabilitation and Liquidation

- Provides employees and retired employees of the Division of Rehabilitation and Liquidation or their surviving spouses are enrollees of the state group insurance program.

Florida Patient's Compensation Fund (Fund)

- Revises structure and authority of the Fund by eliminating the board of governors of the Fund and transferring the supervision of the Fund to the CFO or his or her designee.
- Prescribes duties of the CFO and the DFS to wind down the Fund, and to dissolve the Fund on or before December 31, 2023.

The bill may have an insignificant but indeterminate impact on state revenues and expenditures. *See* Section V. Fiscal Impact Statement.

Except as otherwise expressly provided, this act takes effect July 1, 2022.

II. Present Situation:

The Chief Financial Officer (CFO) is the chief fiscal officer of Florida and is responsible for settling and approving accounts against the state and keeping all state funds and securities.[1] The CFO serves as the head of the Department of Financial Services (DFS or department). Offices and divisions within the DFS include:

- Insurance Consumer Advocate;
- Accounting and Auditing;
- Administration;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services;
- Public Assistance Fraud;
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;
- Unclaimed Property; and
- Workers' Compensation.[2]

[1] Section 17.001, F.S.
[2] Department of Financial Services, *Divisions and Offices* https://www.myfloridacfo.com/ (last visited Jan. 17, 2022).

Division of Accounting and Auditing

Section 215.93, F.S., establishes the Florida Financial Management Information System (FFMIS) for the state. The intent of the FFMIS is to ensure the efficient operation of an integrated financial management information system and to provide necessary information for the effective operation of state government.[3] The Florida Accounting Information Resource Subsystem (FLAIR) is the state's accounting system, and it is a subsystem of the FFMIS.[4] The functions of FLAIR include accounting and reporting of information to producing financial statements for the state and auditing and settling claims against the state.[5] In 2014, DFS created the Florida Planning, Accounting, and Ledger Management (PALM) Project to replace the State of Florida's current accounting and cash management systems with an integrated, enterprise financial management solution that will allow the state to organize, define, and standardize its financial management processes. The Florida PALM Project is a multiyear project.[6]

The Division of Accounting and Auditing, Bureau of Financial Reporting (Bureau), is responsible for the oversight of local government financial reports and the Comprehensive Annual Financial Reports (CAFR). The Chief Financial Officer is required to publish a CAFR in accordance with generally accepted accounting principles (GAAP).[7] The CAFR includes the audited financial statements, other disclosures, and supplementary information, presenting the state's financial condition and results of operations during the fiscal year.[8] The Government Accounting Standards Board (GASB) establishes accounting and financial reporting standards for U.S. state and local governments that follow GAAP and recently changed the term, "Comprehensive Annual Financial Report" (CAFR)[9] to the term, "Annual Comprehensive Financial Report" (ACFR).

Chapter 218, F.S., prescribes financial management and reporting requirements for local governments, which include counties, municipalities, and special districts. The Division of Accounting and Auditing's website provides resources to assist local governments in fulfilling their reporting requirements.[10] Local governments must submit their annual financial reports (AFRs) to the DFS and provide their audited financial statements.[11] The AFR is available to the public in the local government electronic reporting (LOGER).

[3] Section 215.93(1), F.S.
[4] Section 215.93(1)(b), F.S. The DFS is the functional owner of FLAIR. Section 215.94(2), F.S.
[5] Section 215.94(2), F.S.
[6] *Id.*
[7] Section 216.102(3), F.S.
[8] *See* Florida's Comprehensive Annual Financial Report, Fiscal Year ended June 30, 2020, https://www.myfloridacfo.com/division/aa/reports/documents/DeptofFinServ-StateofFLCAFR2020-FINAL-2-26-2021.pdf (last visited Feb. 7, 2022).
[9] GASB, Statement No. 98, The Annual Comprehensive Financial Report, (Oct. 2021), https://www.gasb.org/jsp/GASB/Document_C/DocumentPage?cid=1176178723455&acceptedDisclaimer=true (last visited Feb. 7, 2022).
[10] Department of Financial Services, Division of Accounting and Auditing, Local Governments, https://www.myfloridacfo.com/division/aa/localgovernments/ (last visited Feb. 7, 2022).
[11] Section 218.32, F.S.

In 2018,[12] legislation was enacted to require the DFS to create an interactive repository of financial statement information, known as the Florida Open Financial Statement System.[13] This system must have standardized taxonomies for state, county, municipal, and special district financial filings. The Division of Accounting & Auditing and the Office of Information Technology are designing the Florida Open Financial Statement System.[14]

Division of Rehabilitation and Liquidation

Federal law provides insurance companies may not file for bankruptcy.[15] The state, through the Division of Rehabilitation (division or receiver), is instead responsible for rehabilitating or liquidating an insurer.[16] States primarily regulate insurance companies, and the state of domicile serves as the primary regulator for insurers. The receiver administers insurance companies placed into receivership in Florida.[17]

Insurance companies in receivership fund positions within the division. Since these positions are not appropriated from state funds, the positions are not state employee positions and are not eligible for the state group insurance program.[18] Because the division must purchase health insurance in the small group market, it is unable to leverage the economies of scale, and faces yearly premium increases. The division anticipates these increases will continue to occur in the future, which ultimately affects the claimants in the receivership estates. The division is a participating entity of the Florida Retirement System.[19] The division also participates in the State's Deferred Compensation program.

Division of Funeral, Cemetery, and Consumer Services

Section 20.121(4), F.S., creates the Board of Funeral, Cemetery, and Consumer Services (board) within the Division of Funeral, Cemetery, and Consumer Services of the DFS. The board acts as the licensing and rulemaking authority for the purposes of certain matters related to examinations and other substantive requirements for licensure within the death care industry under ch. 497, F.S., including facility requirements.[20]

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[12] Ch. 2018-102, s. 4, Laws of Fla.
[13] Section 218.32(1)(h), F.S.
[14] Department of Financial Services, Florida Open Financial Statement Project, https://www.myfloridacfo.com/division/aa/projects/flopenfinancialstmtproject.htm (last visited Feb. 7, 2021).
[15] The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. s. 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. *See* 15 U.S.C. ss. 1011- 1012.
[16] Sections 631.051 and 631.061, F.S. Chapter 631, F.S., governs the receivership process for insurance companies in Florida.
[17] *Id.*
[18] Department of Financial Services, Division of Rehabilitation and Liquidation, https://myfloridacfo.com/division/receiver/career-opportunities/humanresources-recruitmentandselection (last visited Feb. 7, 2022).
[19] *Id.*
[20] *See* s. 497.103(1)(a)-(cc), F.S. Licenses available to natural persons include: embalmer apprentice and intern; funeral directors and intern; funeral director and embalmer, direct disposer, monument establishment sales agent, and preneed sales agent. Section 497.141(12)(a), F.S. Licenses available to natural persons, corporations, limited liability companies, and partnerships include: funeral establishment, centralized embalming facility, refrigeration facility, direct disposal establishment, monument establishment, cinerator facility, removal service, preneed sales business under s. 497.453, F.S., and cemetery. Section 497.141(12)(b)-(c), F.S. sets forth who may apply for which licenses.

Fees

Current law imposes a maximum charge to consumers of $50 for transference of burial rights from one purchaser to another.[21]

Licensure

There are several options available for embalmers or funeral directors to obtain reciprocal licensure in Florida.[22] One method to receive a reciprocal licensure for an embalmer is to hold a valid licensure in a state that has requirements at the time of original licensure that are substantially equivalent to or more stringent than Florida's requirements at the same time.[23]

A funeral director may apply to obtain a reciprocal licensure in Florida if the provisions of s. 497.374, F.S., are met. The applicant must hold a valid license to practice funeral directing in another state, provided that, when the applicant secured her or his original license, the requirements for licensure were substantially equivalent to or more stringent than those existing in Florida.[24]

Current law prescribes the scope of practice of funeral directing a licensed funeral director may perform.[25] These duties include:

- Selling or offering to sell funeral services;
- Planning or arranging the details of the funeral services;
- Embalming, cremation, or other services relating to the final disposition of human remains; including the removals of such remains from the state;
- Setting the time of the service;
- Establishing the type of services to be rendered;
- Acquiring the services of the clergy;
- Obtaining vital information for the filing of death certificates and burial transit permits; or
- Directing any memorial services that is held prior to or within 72 hours of the burial or cremation if such service is old or arranged by the licensee.

Division of Insurance Agents and Agencies

Chapter 626, F.S., governs the regulation of insurance field representatives, navigators, insurance administrators, unauthorized insurers and surplus lines, viatical settlements, structured settlements, and operations.[26] The powers and duties of the CFO and the DFS in part I of ch. 626, F.S., apply only with respect to insurance agents, insurance agencies, managing general agents, insurance adjusters, reinsurance intermediaries, viatical settlement brokers, customer

[21] Section 497.277(2), F.S.
[22] Section 497.369, F.S.
[23] Section 497.369
[24] Section 497.374(1)(b), F.S.
[25] Section 497.372(1), F.S.
[26] This includes licensing and other requirements (part I), general lines agents (part II), life insurance agents (part III), health insurance agents (part IV), title insurance agents (part V), insurance adjusters (part VI), insurance administrators (part VII), and viatical settlements (part X).

representatives, service representatives, and agencies.[27] Further, the DFS has jurisdiction to enforce provisions of parts VIII and IX of ch. 626, F.S., with respect to persons engaged in actions for which a license issued by the DFS is required.[28] The powers and duties of the Financial Service Commission and the Office of Insurance Regulation (OIR) [29] specified in part I apply only with respect to service companies, insurance administrators, and viatical settlement providers and contracts.[30] The OIR has jurisdiction to enforce provisions of parts VIII and IX of ch. 626, F.S., with respect to persons who engage in actions for which a license or certificate of authority issued by the OIR is required.[31] However, s. 626.016, F.S., is not intended to limit the authority of the DFS and the Division of Investigative and Forensic Services within the DFS, as specified in s. 626.989, F.S.

The Division of Insurance Agent and Agency Services (division) licenses and appoints individuals and entities authorized to transact insurance in Florida as provided in s. 626.016, F.S. Further, the division receives and reviews applications for insurance licenses and oversees the examination, licensing, and continuing education of licensees. The division also conducts investigations of alleged violations of the Florida Insurance Code and refers suspected criminal violations of the Florida Insurance Code to the Division of Investigative and Forensic Services' Bureau of Insurance Fraud within the DFS or other law enforcement agencies as appropriate.[32]

Section 626.112, F.S., states that no person may be, act as, or advertise or hold himself or herself out to be an insurance agent, insurance adjuster, customer representative, service representative, or managing general agent unless he or she is currently licensed by the department and appointed by an appropriate appointing entity or person. All licenses require an appointment with the exception of insurance agency licenses.

Agents with Unaffiliated appointments

Unaffiliated insurance agents, are those licensees, except a limited lines agent, who are self-appointed and who practice as an independent consultant in the business of analyzing and abstracting insurance policies, providing insurance advice or counseling, or making specific recommendations or comparisons of insurance products for a fee established in advance in a written contract signed by the parties. An unaffiliated insurance agent may not be affiliated with an insurer, insurer-appointed insurance agent, or insurance agency contracted with or employing insurer-appointed insurance agents.[33] According to the DFS, unaffiliated appointments were intended to allow a licensee to hold their license in good standing, giving the licensee credentials in the knowledge for holding a license, without soliciting insurance coverage.[34]

[27] Section 626.016(1), F.S.
[28] Section 626.016(3), F.S.
[29] Pursuant to s. 20.121(3), F.S., the Office of Insurance Regulation is an office within the Financial Services Commission (FSC). The FSC is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. The FSC members serve as the agency head for purposes of rulemaking under ss. 120.536-120.565, F.S.
[30] Section 626.016(2), F.S.
[31] Sections 626.016(3), F.S.
[32] Sections 624.307, 624.317, and 624.321, F.S.
[33] Section 626.015(20), F.S.
[34] Department of Financial Services, *2022 Legislative Bill Analysis of SB 1874* (January 18, 2022) (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

Insurance Adjuster Licensure Examination

An adjuster is an individual employed by an insurer to evaluate losses and settle policyholder claims.[35] An adjuster may be licensed as either an "all-lines adjuster" or a "public adjuster."[36] An all-lines adjuster "is a person who, for money, commission, or any other thing of value, directly or indirectly undertakes on behalf of a public adjuster or an insurer to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage."[37] Subject to certain exceptions, a public adjuster is someone that is paid by an insured to prepare and file a claim against his or her insurer.[38]

Among other requirements, an applicant must pass an examination to obtain an adjuster's license; however, the examination requirement is waived if the applicant has attained certain professional designations that document their successful completion of professional education coursework. An examination is not required for all-lines adjuster applicants that obtains certain specified professional designations.[39] The DFS must approve the curriculum, which must include comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard the DFS testing for the all-lines adjuster license.[40]

Closure of an Insurance Agency

Currently an agency is not required to provide notification to a policyholder or premium finance company or follow protocols when an agency is closing for an extended period or closing permanently.

Division of State Fire Marshal

The Division of State Fire Marshal protects people and property throughout Florida and has authority to inspect buildings, structures, equipment, vehicles and chemicals when there is reasonable cause to believe a violation of the Florida Fire Code has occurred.[41] The Division of State Fire Marshal:

- Conducts safety inspections and reviews construction plans for all state-owned buildings, regulates fireworks and the fire sprinkler industry, inspects and licenses boilers, and certifies persons working in the fire suppression industry; and
- Approves curricula and training at the Florida State Fire College and certifies that fire service members meet industry standards.[42]

[35] Insurance Information Institute. *I.I.I. Glossary* (defining "adjuster"), https://www.iii.org/resource-center/iii-glossary/A (last visited Feb. 7, 2022).
[36] Section 626.864, F.S.
[37] Sections 626.015 and 626.8548, F.S.
[38] Section 626.854(1), F.S.
[39] Section 626.221, F.S.
[40] Section 626.221(2)(j), F.S.
[41] Department of Financial Services, Division of State Fire Marshal, https://www.myfloridacfo.com/division/sfm/ (last visited Feb. 7, 2022).
[42] *Id.*

Firefighter Certification

To be certified as a firefighter, a person must complete a minimum standards course and examination established by the State Fire Marshal or show proof of equivalent training in another state, and pass an exam within one year of completing the minimum standards course.[43] Additionally, the applicant must be in good physical condition, as determined by a medical examination, and have good moral character, as determined by a background investigation that includes the processing of fingerprints for a national criminal background check.[44]

To serve as an administrative and command head of a fire service provider, or to work in a position directing incident outcomes, a certified firefighter must earn a Special Certificate of Compliance.[45] Such person must be active as a firefighter, maintain a valid fire service instructor certificate and teach at least 40 hours of instruction during a four-year period, and complete a Firefighter Retention Refresher Course prior to expiration of the four-year period.[46]

To renew a certification, a firefighter must:
- Be active as a firefighter, meaning the certificate holder was employed as a firefighter or served as a volunteer firefighter for at least six months during a four-year period; or
- Hold a fire service instructor certificate and instruct at least 40 hours during a four-year period, or
- Complete a Firefighter Retention Refresher Course during the six months before the four-year period expires, or
- Retake and pass the Minimum Standards Course examination during the six months before the four-year period expires.[47]

Firefighter Assistance Grant Program

The Firefighter Assistance Grant was created to improve the emergency response capability of volunteer fire departments and combination fire departments.[48] The program is required to provide financial assistance to improve firefighter safety and to enable such fire departments to provide firefighting, emergency medical, and rescue services to their communities.[49] Funding is available for training, personal protective equipment, self-contained breathing apparatus, and fire engine pumper apparatus.[50] According to the DFS, many of the fire departments that are eligible to participate in this grant program are in rural economically challenged areas of the state and have limited funding opportunities to purchase additional crucially needed tools and equipment.[51]

[43] Section 633.408(4), F.S.
[44] Sections 633.408 and 633.412, F.S.
[45] Section 633.408(6), F.S.
[46] *Id.*
[47] Section 633.414, F.S.
[48] Section 633.135(1), F.S. Combination fire department is a fire department that is composed of career and volunteer firefighters.
[49] Section 633.135, F.S., and Rule 69A-37-501, F.A.C.
[50] Section 633.135(4), F.S.
[51] The Department of Financial Services, *2022 Legislative Bill Analysis of HB 959* (Similar to SB 1874) (Dec. 22, 2022).

Boiler Safety Act

Chapter 554, F.S., is the "Boiler Safety Act."[52] The DFS is authorized to adopt by rule a State Boiler Code for the safe construction, installation, inspection, maintenance, and repair of boilers in Florida.[53] The State Fire Marshall performs inspections to ensure the safety of boilers in public buildings.[54] Boiler inspectors must meet initial and ongoing certification requirements.[55] The DFS may impose various fees, such as, initial and annual certificates of competency, certificate inspections.

According to the DFS, some provisions within ch. 554 are outdated. For example, a requirement for American Society of Mechanical Engineers (ASME)[56] stamping of boilers between 200,000 and 400,000 BTU has been in the statute for several years but did not have a phase in date to allow for utilization of manufacturer's inventory. [57] Additionally, the carbon monoxide detector requirement of ch. 509, F.S., lacks clarity as to the enforcement ability of authorized third-party inspectors.[58]

Division of Workers' Compensation

The workers' compensation law[59] requires an employer[60] to obtain coverage for their "employees" that provides for lost income and all medically necessary remedial treatment, attendance, and care resulting from work related injuries and occupational diseases. The Division of Workers' Compensation[61] within the DFS provides regulatory oversight of the system.[62] The DFS' responsibilities include enforcing employer compliance with coverage requirements,[63] administration of the workers' compensation health care delivery system, collecting system data, educating and assisting employers and injured workers.

[52] Section 554.1011, F.S.
[53] Section 554.103, F.S.
[54] Department of Financial Services, Division of State Fire Marshal, Boiler Safety Section, https://www.myfloridacfo.com/Division/sfm/BFP/BoilerSafety/default.htm (last visited Feb. 7, 2022).
[55] Section 554.104, F.S.
[56] "ASME Code" is the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code published by that Society, which are incorporated by reference in Rule 69A-51.010, F.A.C. See Rule 69A-51.005(6), F.A.C.
[57] The Department of Financial Services (DFS), *2022 Legislative Bill Analysis of SB 1874* (January 18, 2022) (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).
[58] *Id.*
[59] Ch. 440, F.S.
[60] Employer" means the state and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustees of any person. "Employer" also includes employment agencies, employee leasing companies, and similar agents who provide employees to other persons. s. 440.02(16), F.S. The most common exception to this is non-construction industry employers with fewer than four employees. There are a number of other exceptions, exclusions, and exemptions that affect whether an employer must provide workers' compensation coverage generally or to a particular individual. See s. 440.02(15)–(17), F.S.
[61] Department of Financial Services, Division of Workers' Compensation, *About the Division*, https://www.myfloridacfo.com/Division/WC/contactUs.htm (last visited Feb. 7, 2022).
[62] Section 440.191, F.S.
[63] Section 440.107, F.S.

Coverage Requirements; Enforcement

Whether an employer is required to have workers' compensation insurance depends upon the employer's industry (i.e., construction, non-construction, or agricultural) and the number of employees.[64] The coverage thresholds are as follows:

- Construction – one or more "employees;"
- Non-construction – four or more "employees;" and
- Agricultural - six or more regular employees and/or 12 or more seasonal employees who work for more than 30 days.[65]

Employers may obtain coverage by purchasing a workers' compensation insurance policy from an insurer; purchasing coverage from the Workers' Compensation Joint Underwriting Association (for employers that are unable to purchase a workers' compensation insurance policy from an authorized insurance company); or qualifying as a self-insurer.[66] In order to apply for or renew an exemption from workers' compensation law, the exemption applicant must complete and submit a Notice of Election to be Exempt application online. The notice must list the name, date of birth, and driver's license number of Florida identification card number, and other specified information.[67]

The DFS has the authority to enter and inspect any place of business for purposes of ensuring employer compliance with workers' compensation law, and the DFS can request an employer's business records.[68] An employer must produce the required business records within ten business days of receiving the written request for records. The failure of an employer to comply with the workers' compensation coverage requirements is considered to pose an immediate danger to public health, safety, and welfare; the DFS must issue a Stop-Work Order within 72 hours of determination of non-compliance, which requires the employer to cease all business operations.[69] The DFS may release a Stop-Work Order when an employer provides proof of compliance and pays $1,000, as a down payment, and agrees to enter into a penalty payment agreement with the DFS for the full amount.[70] The penalty is a minimum of $1,000 and is based on the insurance premiums, which should have been paid, but were not, multiplied by two for the prior two years.[71]

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[64] The terms "injured employee" and "injured worker" are used interchangeably throughout ch. 440, F.S., in relation to individuals claiming or receiving workers' compensation benefits. However, neither term is expressly defined in the workers' compensation law. Since the term "injured employee" implies a continuing employment relationship that may not in fact exist following an injury, this analysis will use the term "injured worker" exclusively, but it is intended to mean both "injured employee" and "injured worker" wherever it is used, unless the context or law requires otherwise. The term "injured employee" is not same as "employee." The former denotes one who is claiming benefits following an injury, while the latter denotes one who may be subject to the coverage requirements of the workers' compensation law, depending upon the circumstances of their employment and nature of their employer.

[65] Department of Financial Services, Division of Workers' Compensation, *Coverage Requirements*, https://www.myfloridacfo.com/division/wc/employer/coverage.htm (last visited Feb. 7, 2022).

[66] Sections 440.38 and 627.311(5), F.S.

[67] Section 440.05(3), F.S.

[68] Section 440.107(7)(a), F.S.

[69] *Id.*

[70] Section 440.107(7)(d), F.S.

[71] *Id.*

Reporting by Carriers and Audits by Carriers

Within three days after the employer or the employee informs the carrier of an injury, the carrier must mail to the injured worker an informational brochure approved by the DFS that provides an explanation of the rights, benefits, procedures for obtaining benefits and assistance, criminal penalties, and obligations of injured workers and their employers under the Florida Workers' Compensation Law.[72]

Further, the carrier or its third-party administrator is required to mail the same brochure annually to employers.[73]

Three-member Panel; Guides of Maximum Reimbursement Allowances; Rulemaking

Florida's workers' compensation law provides for medically necessary treatment and care of injured employees. An individual physician, hospital, ambulatory surgical center, pain program, or work-hardening program must be reimbursed at either the agreed-upon contract price or the maximum reimbursement allowance in the appropriate schedule.[74] The law provides reimbursement formulas and methodologies to compensate providers of health services, subject to maximum reimbursement allowances (MRAs).[75]

A three-member panel (panel) consisting of the Chief Financial Officer (CFO) or CFO's designee and two Governor's appointees sets the MRAs.[76] The DFS incorporates the statewide schedules of the MRAs by rule in reimbursement manuals. In establishing the MRA manuals, the panel considers the usual and customary levels of reimbursement for treatment, services, and care;[77] the cost impact to employers for providing reimbursement that ensures that injured workers have access to necessary medical care; and the financial impact of the MRAs on healthcare providers and facilities.[78] Florida law requires the panel to develop MRA manuals that are reasonable, promote the workers' compensation system's healthcare cost containment and efficiency, and are sufficient to ensure that medically necessary treatment is available for injured workers.[79]

The panel develops four different reimbursement manuals to determine statewide schedules of maximum reimbursement allowances. The healthcare provider manual limits the maximum reimbursement for licensed physicians to 110 percent of Medicare reimbursement,[80] while reimbursement for surgical procedures is limited to 140 percent of Medicare.[81] The hospital manual sets maximum reimbursement for outpatient scheduled surgeries at 60 percent of usual and customary charges,[82] while other outpatient services are limited to 75 percent of usual and

[72] Section 440.185(3), F.S.
[73] *Id.*
[74] *Id.*
[75] Section 440.13(12), F.S.
[76] Section 440.13(12)(a), F.S.
[77] Section 440.13(12)(d)1., F.S.
[78] Section 440.13(12)(d)2., F.S.
[79] Section 440.13(12)(d)3., F.S.
[80] Section 440.13(12)(b)4., F.S.
[81] Section 440.13(12)(b)5., F.S.
[82] Section 440.13(12)(b)3., F.S.

customary charges.[83] Reimbursement of inpatient hospital care is limited based on a schedule of per diem rates approved by the panel.[84] The ambulatory surgical centers manual limits reimbursement to 60 percent of usual and customary as such services are generally scheduled outpatient surgeries. The prescription drug reimbursement manual limits reimbursement to the average wholesale price plus a $4.18 dispensing fee.[85] Repackaged or relabeled prescription medication dispensed by a dispensing practitioner has a maximum reimbursement of 112.5 percent of the average wholesale price plus an $8.00 dispensing fee.[86] Fees may not exceed the schedules adopted under Ch. 440, F.S., and department rule.[87]

Rulemaking Authority and Legislative Ratification

A rule is an "agency statement of general applicability that implements, interprets, or prescribes law or policy."[88] Rulemaking authority is delegated by the Legislature in law to an agency, and authorizes an agency to adopt, develop, establish, or otherwise create a rule.[89] An agency may not engage in rulemaking unless it has a legislative grant of authority to do so.[90] The statutory authority for rulemaking must be specific enough to guide an agency's rulemaking and an agency rule must not exceed the bounds of authority granted by the Legislature.[91]

Prior to the adoption, amendment, or repeal of any rule, an agency must file a notice of the proposed rule in the Florida Administrative Register.[92] The notice of the proposed rule must include:

- An explanation of the purpose and effect;
- The specific legal authority for the rule;
- The full text of the rule; and
- A summary of the agency's statement of estimated regulatory costs (SERC), if one is prepared.[93]

Within 21 days of the notice, the public may provide an agency with information regarding the SERC or provide proposals for a lower cost alternative to the rule.[94]

SERC Requirements

Agencies must prepare the SERC for a rule that has an adverse impact on small businesses or that increases regulatory costs more than $200,000 within one year after implementation of the rule.[95]

[83] Section 440.13(12)(a), F.S.
[84] Section 440.13(12)(a), F.S.
[85] Section 440.13(12)(c), F.S.
[86] *Id.*
[87] Section 440.13(13)(b), F.S. The department also has broad rulemaking authority under s. 440.591, F.S.
[88] Section 120.52(16), F.S.
[89] Section 120.52(17), F.S.
[90] *See* ss. 120.52(8) and 120.536, F.S.
[91] *See Sloban v. Florida Board of Pharmacy*, 982 So.2d 26 (Fla. 1st DCA 2008) and *Southwest Florida Water Management District v. Save the Manatee Club, Inc*., 773 So.2d 594 (Fla 1st DCA 2000).
[92] *See* ss. 120.54(2)(a) and 120.55(1)(b), F.S.
[93] Section 120.54(3)(a)1., F.S.
[94] *See* ss. 120.54(3)(a)1., and 120.541(1)(a), F.S.
[95] Section 120.541(1)(a), F.S.

A SERC must include estimates of the following:
- The number of people and entities effected by the proposed rule;
- The cost to the agency and other governmental entities to implement the proposed rule;
- Transactional costs likely to be incurred for compliance; and
- An analysis of the proposed rule's impact on small businesses, counties, and cities.[96]

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of one million dollars within the first five years of implementation on:
- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness,[97] productivity, or innovation; or
- Regulatory costs, including any transactional costs.[98]

If the economic analysis results in an adverse impact or regulatory costs in excess of one million dollars within five years after implementation of the rule, then the Legislature must ratify the rule in order for it to take effect.[99]

The Legislature previously ratified Rule 69L-7.020, F.A.C., of the DFS, which incorporates by reference the 2016 Edition of the Florida Workers' Compensation Health Care Provider Manual, providing for reimbursement of healthcare providers under the increased MRAs approved by the panel. The DFS has subsequently adopted amended versions of the rule, incorporating by referenced the Manual. The updated Manual is estimated to increase workers' compensation system costs by 0.2 percent (eight million dollars).[100] According to the SERC, the revisions to the MRAs in the updated manual are projected to result in increased costs to the overall compensation system of eight million dollars over the next five years.[101]

In 2022, SB 1274 was filed, which would ratify Rule 69L-7.020, F.A.C.

The Chief Financial Officer as Agent for Service of Process on Insurers

Florida's Chief Financial Officer[102] (CFO) is the agent for service of process on all insurers applying for authority to transact insurance in this state, all licensed nonresident insurance agents, all nonresident disability insurance agents licensed pursuant to s. 626.835, F.S., any unauthorized insurer under s. 626.906, F.S. or s. 626.937, F.S., domestic reciprocal insurers,

[96] Section 120.541(2)(b)-(e), F.S. A small city has an unincarcerated population of 10,000 or less. A small county has an unincarcerated population of 75,000 or less. A small business employs less than 200 people, and has a net worth of five million dollars or less.
[97] Business competitiveness includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.
[98] Section 120.541(2)(a), F.S.
[99] Section 120.541(3), F.S. Legislative ratification is not required for adoption of federal standards, amendments to the Florida Building Code, or amendments to the Florida Fire Prevention Code. *See* s. 120.541(4), F.S.
[100] National Council on Compensation Insurance, Inc., *Analysis of Florida Medical Fee Schedule Changes Proposed to be Effective July 1, 2021*, November 16, 2020 (on file with the Senate Committee on Banking and Insurance).
[101] Florida Department of Financial Services, *Statement of Estimated Regulatory Costs Rule 69L-7.020, F.A.C.* (November 2021) (on file with the Senate Committee on Banking and Insurance).
[102] The CFO's assistant, deputy, or another person in charge of the office may also serve as the agent for service of process.

fraternal benefit societies under ch. 632, F.S., warranty associations under ch. 634, F.S., prepaid limited health service organizations under ch. 636, F.S., and persons required to file statements under s. 628.461, F.S.[103]

Service of process on the CFO is made by mail, personal service, or internet-based transmission system created by the DFS.[104] Upon receipt of service of process, the CFO retains a record copy in paper or electronic form and promptly forwards one copy of the process documents to the insurer's designated process agent by registered or certified mail.[105] The CFO may also make the process documents available from a secure website created by the DFS and provide notice of availability and retrieval instructions to the insurer's designated process agent under s. 624.307(9), F.S. Under current law, service of process is considered valid and binding service on the insurer when the process documents are served on the CFO and sent or made available to the insurer pursuant to s. 624.307(9), F.S., rather than at such time the insurer receives the process documents.[106]

Recent court cases have addressed similar questions related to whether service of process on an insurer is perfected at the time served on the CFO or at the time received by the insurer. For example, in *Markovits*,[107] an uninsured motorist lawsuit that also involved an award of attorney fees for a rejected proposal for settlement, the court was asked to determine whether a proposal for settlement served on the insurer 91 days after service of the complaint on the CFO but 88 days after the complaint was forwarded by the CFO to the insurer, constituted valid service within a 90-day deadline for proposals for settlement on the insurer. In addition to finding statutory authority under s. 624.423(3), F.S., the court ultimately based its decision on s. 48.151(1), F.S., relating to service on statutory agents for certain persons, citing in part "[w]hen any law designates a public officer, board, agency, or commission as agent for service of process" and the person or entity so designated is served with process, then "service is valid service for all purposes," and holding that service of process is considered valid and binding on the insurer when served on the CFO.[108]

Fingerprints for Background Checks

The Florida Insurance Code authorizes the DFS to investigate any applicant or licensee, and further states that licensing statutes, which require an evaluation of an applicant's character or fitness must include the submission of fingerprints for a national criminal records check.[109] Applicants and licensees submit fingerprints to the Florida Department of Law Enforcement (FDLE), which forwards the fingerprints to the Federal Bureau of Investigations (FBI) for a federal background check.[110] The federal check is conducted through the FBI, which manages a criminal history record information (CHRI) system, through which this information can be obtained. The purpose of the CHRI system is to assure criminal history record information

[103] Section 48.151(3), F.S.
[104] *Id.*
[105] Section 624.423(1), F.S.
[106] Section 624.423(3), F.S.
[107] *Markovits v. Stater Farm Mutual Automobile Insurance*, 235 So. 3d 1018 (Fla. 1st DCA 2018).
[108] *Markovitz* at 1020.
[109] Section 626.201, F.S.
[110] Section 624.34, F.S.

wherever it appears is collected, stored, and disseminated in a manner to ensure the accuracy, completeness, currency, integrity, and security of such information and to protect individual privacy.[111]

Federal law authorizes the exchange of CHRI with officials of state and local governmental agencies for licensing and employment purposes.[112] However, this access can only be authorized by a state statute, which has been subsequently approved by the Attorney General of the United States. The FBI processes fingerprints only if the criteria established by the U.S. Department of Justice has been satisfied. To satisfy federal law, a state licensing statute must identify the specific categories of licenses that require the submission of fingerprints as part of an application and expressly state the applicant's fingerprints will be submitted to the FBI or submitted for a national criminal records background check.

The DFS has recommended many technical amendments to licensing laws including chs. 626 and 648, F.S., to ensure compliance with federal law and continuation of FBI background checks for applicants seeking licensure with DFS.[113]

Florida's Patient Compensation Fund

In response to the mid-1970's medical malpractice crisis, the Florida Legislature enacted comprehensive medical malpractice reforms with the passage of "The Medical Malpractice Reform Act of 1975."[114] One of the main features of the 1975 Medical Malpractice Act was the creation of the Florida Patient's Compensation Fund (Fund), which was designed to provide medical malpractice coverage to doctors, practitioners, hospitals, and health care facilities that were unable to purchase coverage in the commercial market. Participants had to show proof of $100,000 coverage from an insurer or self-insurance plan and deposit an annual fee into the Fund.[115] The Fund paid the excess over $100,000 for any judgment or settlement against a member. The Fund was capped at $25 million and could not pay more than one million dollars on a given claim in any single year.[116] The Fund commenced operations on July 1, 1975, in accordance with s. 766.105, F.S. The Fund is a political subdivision of the state; however, it is not a state agency, board, or commission.[117]

The Fund is subject to the supervision of a Board of Governors (board) consisting of 11 representatives.[118] Seven representatives, one each from the insurance industry, physicians' insurance, physicians' self-insurance, hospital insurance, hospital self-insurance, osteopathic or podiatric physicians' insurance or self-insurance, and the general public, are appointed by the CFO.[119] The Florida Bar appoints one attorney, the Florida Medical Association appoints one

[111] 28 C.F.R. s. 20.1
[112] Pub. L. 92-544.
[113] Department of Financial Services (DFS), *2022 Legislative Bill Analysis of SB 1874* (January 18, 2022) (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).
[114] Ch. 75-9, Laws of Fla.
[115] Section 766.105(2)(d)2, F.S.
[116] Section 765,105, F.S.
[117] Section 766.105(1)(a), F.S.
[118] Section 766.105(3)(b), F.S.
[119] *Id.*

physician's representative, and the Florida Hospital Association appoints two hospital representatives.[120]

The Fund attracted providers and ran smoothly for a few years but was not actuarially sound, so substantial losses began to accumulate.[121, 122] In 1982, the Fund assessed its members to cover deficits, hospitals dropped out because most of the claims were against physicians, and the Fund was unable to continue operating.[123] During its short tenure, the Fund received $72 million in membership fees and $280 million in assessments; closed 4,595 claims and paid more than $311 million to victims of medical malpractice.[124]

Initially, the Fund was scheduled for sunset in 1991 and repeal in 1995; however, during a special session in 1991 the Legislature revived and readopted all statutes that had been subject to future repeal, including Section 766.105, F.S.[125] As a result, the law has not been subject to sunset review even though the Fund has not accepted new members since June 30, 1983.[126]

Hospitals licensed pursuant to ch. 395, F.S., are mandatory members unless they can demonstrate financial responsibility to pay claims and costs described in s. 766.105(2)(c), F.S. Other health care providers[127] such as physicians, osteopaths, and professional associations are allowed to participate in the Fund. To become members of the Fund, all licensed Florida hospitals and health care providers electing to enroll in the fund must pay an annual membership fee and any applicable assessments based upon past and prospective loss and expense experience; and prior claims experience of the members covered under the fund. Members receive coverage for claims arising from rendering or failure to render medical care or services resulting in injury or death to a patient. Health care providers choose between two coverage limits afforded by the Fund. Coverage may not exceed one million dollars per claim, three million dollars annual aggregate, or two million dollars per claim, four million dollars annual aggregate. Health care providers are responsible for paying claim amounts in excess of the selected limit and the Fund is not responsible for paying punitive damages that may be awarded to plaintiffs. Coverage limits afforded by the Fund to hospitals may not exceed two and one-half million dollars per claim and does not provide an annual aggregate.[128]

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[120] *Id*.

[121] *The Florida Patient's Compensation Fund: Status Report on Terminating Activities of the Fund*, Section 766.105(3)(h), F.S., provides that the Fund must determine whether it has minimum membership levels to offer coverage one week prior to the beginning of each fiscal year. The minimum membership thresholds of $5 million for non-hospital providers and $12.5 million for hospitals could not be met when hospitals stopped participating.

[122] U.S. General Accounting Office, *Medical Malpractice Case Study on Florida*, *Report to Congressional Requestors*, December 1986, at 8, www.gao.gov/assets/hrd-87-21s-3.pdf (last visited Feb. 8, 2022); and Florida House of Representatives Committee on Insurance, *The Florida Patient's Compensation Fund: Status Report on Terminating Activities of the Fund*, at 1-7 (December 10, 1994).

[123] U.S. General Accounting Office, *Medical Malpractice Case Study on Florida*, *Report to Congressional Requestors*, December 1986, at 10, www.gao.gov/assets/hrd-87-21s-3.pdf (last visited Feb. 8, 2022)

[124] Florida House of Representatives Committee on Insurance, *The Florida Patient's Compensation Fund: Status Report on Terminating Activities of the Fund*, at 17-18 (December 10, 1994).

[125] *Id*., at 1.

[126] Office of Insurance Regulation, *Target Market Conduct Final Examination Report of the Florida Patient's Compensation Fund*, April 25, 2014, at 4, https://www.floir.com/siteDocuments/FLPatientsCompensationFund04252014.pdf (last visited Jan. 30, 2022).

[127] Section 766.105(1)(b), F.S.

[128] Section 766.105, F.S.

The OIR has supervisory authority over the Fund's Plan of Operation and any changes to the Plan of Operation, including repeal.[129]

The law requires the OIR to review any request for assessments of plan participants or refunds of plan participants, and further states the Fund is required to furnish audited financial reports annually, upon request, to any Fund participant and to the OIR and the Joint Legislative Auditing Committee.[130] The board may authorize refunds when revenues exceed known liabilities and expenses.[131] Excesses or unearned fees are refunded to members in proportion to the contributions made in accordance with procedures adopted by the board and approved by the OIR. The Fund has certified to the OIR twelve assessments, and the OIR has approved 11 refunds. [132] The last year the hospitals contributed member fees was in 1982; the last year the physician class contributed member fees was in 1983.[133] The last refund approved by the OIR was in March 2004.[134]

The Fund ceased to offer coverage effective July 1, 1983, because it failed to attain the necessary minimum membership levels to offer coverage.[135] The Fund purchased structured settlement annuities to fulfill the terms and conditions of settlement agreements with claimants in medical malpractice cases.[136] According to the DFS, the Fund has represented that there are no open or active claims that are not being serviced through a structured settlement.[137]

In 2021, an actuarial report conducted for the Fund found the Fund retains an ownership interest in 15 annuities that have an aggregate future value of $12,680,687. In the event of an insurer insolvency, many of the annuities would be covered by Florida Life and Health Insurance Guaranty Association (FLHIGA); therefore the actuary concluded Fund's exposure to contingent liability is $2,403,590. About half of the remaining annuitants were children when their parents entered into structured settlements with the Fund; therefore, some of the remaining annuities may continue for another 40 years.[138]

As of December 2020, the Fund reported a reserve for unearned fees of $15,135,541, which includes $14,888,634 held in investment accounts.[139]

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[129] Section 766.105(3)(c)2, F.S.
[130] Section 766.105(3)(e)4, F.S.
[131] Section 766.105(3), F.S.
[132] Office of Insurance Regulation, *Target Market Conduct Examination Report of the Florida Patient's Compensation Fund* (Apr. 25, 2014) https://www.floir.com/siteDocuments/FLPatientsCompensationFund04252014.pdf (last visited Feb. 8, 2022).
[133] *Id.*
[134] *Id.*
[135] Section 766.105(3)(h), F.S., provides at least seven days prior to the beginning of each fiscal year, the Florida's Patient Compensation Fund shall determine whether it will attain the minimum membership levels to offer coverage. The minimum membership thresholds are total membership fees of five million dollars for non-hospital health care provider members and $12.5 million for hospitals members.
[136] Florida House of Representatives Committee on Insurance, *The Florida Patient's Compensation Fund: Status Report on Terminating Activities of the Fund* (December 10, 1994). (On file with the Senate Committee on Banking and Insurance.
[137] Department of Financial Services, *2022 Legislative Bill Analysis of SB 1874* (January 18, 2022) (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).
[138] Jack Swisher, ACAS, MAAA, *Florida Patient's Compensation Fund Annuity Insolvency Analysis* (June 28, 2021) at 4-5; and Correspondence from David Yon, Esq., on behalf of the Florida Patient's Compensation Fund, to Jane Nelson of the Office of Insurance Regulation (Aug. 4, 2021).
[139] Carr Riggs & Ingram CPAs and Advisors, *Florida Patient's Compensation Fund Financial Statements* (Dec. 31, 2020) at 4.

Operating costs have increased in recent years, because the board approved the general manager's request for an assistant in 2015 and approved four percent annual salary increases for the two Fund employees for 2017, 2018, 2019 and 2020.[140] The Fund contributes to an employee pension plan and pays for legal counsel, accounting and auditing, rent and utilities, travel, and insurance.[141]

The following comes from financial statements the Fund shared with its board and the OIR:

Year	2016	2017	2018	2019	2020
Salaries	$181,754	$213,668	$221,600	$229,764	$240,417
Pension Plan	$59,684	$52,303	$55,677	$54,424	$45,891
Rent, Utilities & Janitorial	$20,336	$16,704	$16,158	$16,758	$12,841
General Counsel	$3,500	$42,195	$36,992	$35,339	$37,065
Accounting and Auditing	$73,513	$58,294	$52,578	$52,821	$39,126
Travel & Expense (Staff)	$1,463	$4,087	$3,841	$1,962	$4,404
Travel & Expense (Board)	$7,125	$20,327	$17,627	$21,905	$22,751

Division of State Group Insurance

The Division of State Group Insurance within the Department of Management Services administers the state group health insurance program (program) under a cafeteria plan consistent with s. 125 of the Internal Revenue Code for state employees.[142] Eligible Employees of the program include, state officers; state employees paid from "salaries and benefits" appropriation categories, regardless of the number of hours worked; retired state officers and state employees; surviving spouses of deceased state officers and state employees; certain terminated state officers and state employees; and certain state employees paid from "other-personal-services" appropriation categories.[143]

III. Effect of Proposed Changes:

Division of Accounting and Auditing

Sections 1 and 6-10 repeals s. 17.0315, and amends ss. 215.34, 215.93, 215.94, 216.102, and 218.32, respectively, relating to financial and cash management programs and local government financial reporting. Section 1 repeals s. 17.0315, F.S., relating to the Chief Financial Officer's (CFO) financial and cash management task force due to the creation of the Florida Planning, Accounting and Ledger Management (PALM) financial and cash management system and its executive steering committee. Section 6 eliminates the requirement for an agency to post journal

[140] Memo to the Florida Patient's Compensation Fund Operating Committee from General Manager Charles Portrero, November 19, 2018.
[141] The Office of Insurance Regulation monitors meetings of the Florida Patient's Compensation Fund by telephone and receives copies of meeting materials the Fund provides to its Board of Governors. The OIR provided copies of meeting materials from 2011-2020 to the Florida House of Representatives, Insurance and Banking Subcommittee. House of Representatives *Staff Analysis CS/CS/HB 959* (January 28, 2022), available at https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=75756&SessionId=93 (last visited Feb. 3, 2022).
[142] Section 110.123, F.S.
[143] *Id.*

entries since PALM records debit memorandums. Sections 7 and 8 remove the term, "cash management subsystem" and replaces it with the term, "financial management system." Section 9 replaces the term, "comprehensive annual financial report, with the term, "annual comprehensive financial report," to conform to a change in Governmental Accounting Standards Board (GASB) standards. Section 10 revises the local government reporting system to designate the Florida Open Government Financial Statement System as the primary location for governmental financial reporting.

Service of Process

Section 2 amends s. 48.151, F.S., relating to service on statutory agents, to clarify that the CFO is the agent for service of process on all insurers applying for authority to transact insurance and other specified entities licensed under the Florida Insurance Code. The section also requires the Department of Financial Services (DFS or department) to create a secure online portal as the sole means to accept service of process on the CFO under this section.

Section 25 amends s. 624.307, F.S., to require any regulated person or any unauthorized insurer under s. 626.906, F.S., to appoint the CFO as its agent to receive services of all legal process. Further, the CFO must make the process available through a secure online portal to the person designated by the regulated person or unauthorized insurer to receive the process. The notice must disclose the uniform resource locater (URL) where the process may be obtained.

Section 26 amends s. 624.422, F.S., relating to service of process, to require each licensed insurer to file with the DFS designation of the name and e-mail address of the person to whom process against it served upon the CFO is to be made through the online portal. The online portal is the sole method for service of process.

Section 27 amends s. 624.423, F.S., to clarify that service of process is valid and binding upon the insurer on the date the process is served upon the CFO and is delivered to the insurer or the DFS has notified the insurer that such information has been made available upon a secured online portal.

Section 28 amends s. 624.610, F.S., relating to reinsurance, to provide conforming changes relating to service of process referencing s. 48.151(3), F.S., and to provide service to agents of insurers solely through the department's online portal.

Sections 54-56 amend ss. 626.906, 626.912, and 626.937, F.S., respectively, to provide conforming changes.

Division of Rehabilitation and Liquidation

Sections 3 and 4 amend ss. 110.123 and 110.131, F.S., respectively, to allow full-time and part-time employees, retired employees, and surviving spouses of employees of the Division of Rehabilitation and Liquidation to participate in the state group insurance program.

Rule Ratification

Section 5 amends s. 120.541, F.S., to exempt the schedules of maximum reimbursement allowances adopted by the three-member panel within the DFS from the rule ratification requirements.

Division of Workers' Compensation

Section 12 amends s. 440.02, F.S., to revise the definition of the term, "employer," to include employment agencies and employment leasing companies that provide employees to other business entities or persons. Currently, the definition includes employment agencies, employee leasing companies, and similar agents who provide employees to other persons. The term, "similar agents," is an undefined term, and is removed.

Section 13 amends s. 440.05, F.S. relating to the election of exemption from workers' compensation insurance coverage requirements to provide the following changes:

- Requires an applicant for an exemption to provide a valid driver's license number or valid identification card number as a prerequisite for the DFS to process the application. Currently, the statute does not specify such documents must be valid;
- Eliminates the requirement for an applicant for an exemption from coverage to provide a social security number as a requirement for processing the application;
- Requires an applicant for a workers' compensation exemption to certify he or she has completed an online workers' compensation coverage and compliance tutorial developed by the DFS;
- Replaces the mandatory exemption and revocation of exemption notification requirement to carriers with a carrier opt-in via electronic notification process;
- Adds disclosures to the Certificate of Election to be Exempt that provide the exemption is not a license issued by the Department of Business and Professional Regulation (DBPR) and the DBPR's website has information that can be used to verify an exemption holder's licensure status;
- Eliminates a duplicative business records requirement for exemption holders in the construction industry; and
- Eliminates the scope of business or trade to disclosure on the notice of election to be exempt.

Section 14 amends s. 440.107, F.S., relating to the DFS' powers to enforce employer compliance with coverage requirements. The bill extends the deadline for an employer to submit business records to the DFS from 10 business days to 21 days before the DFS can take an administrative action. The section eliminates the requirement for the DFS to update the Stop-Work Order database on a daily basis. The bill also clarifies an employer must pay any outstanding assessed penalty prior to entering into a new payment agreement schedule with the DFS. In addition, the bill modifies the timeframe for an employer to enter into a payment agreement schedule with the DFS or pay the penalty in full from 28 days after the service of the stop work order to within 21 days after service of the first penalty assessment. For first time employers that do not comply with coverage requirements, the timeframe to calculate a penalty for an employer's penalty formula is reduced from a 24-month period to a 12-month period, thereby reducing the penalty. The 24-month period will remain for employers who were previously issued a stop-work order or materially or understated payroll. The section allows an employer who has not been issued a

Stop-Work Order or an enforcement action an opportunity to reduce their penalty by 15 percent by completing and correctly answering 80 percent of the questions from an on-line workers' compensation coverage and compliance tutorial.

Section 15 amends s. 440.13, F.S., relating to maximum reimbursement allowances for medical services by allowing a carrier to reimburse a health care provider the lesser of the billed charge of a provider or the maximum reimbursement allowance, if an agreed-upon contract price is not in effect. Currently, a carrier must reimburse a provider at the agreed-upon contract or the maximum reimbursement allowance. The section provides rulemaking authority for implementing this section. *See also* **Section 5**.

Sections 16 and 17 amend ss. 440.185 and 440.381, F.S., relating to employer and carrier reporting and carrier audits of employers, respectively. **Section 16** extends the amount of time an employer has to notify a carrier of an injury from three days to three business days and authorizes a carrier to send specified information to an injured worker or employer by e-mail as an option to regular mail. **Section 17** provides that a carrier must conduct a physical onsite audit of construction class employers with policies with an estimated annual premium of $10,000 or more. Currently, there is no minimum premium threshold for physical onsite audits.

Division of Funeral, Cemetery, and Consumer Services

Section 18 amends s. 497.277, F.S., to eliminate the fee cap of $50 for the transference of burial rights from the purchaser to another.

Section 19 amends s. 497.369, F.S., to revise the requirements for obtaining an embalmer's license in Florida. The changes would allow an applicant to obtain a reciprocal licensure in Florida if they held a valid license in another state and had engaged in the full-time licensed practice of embalming in that state for at least five years.

Section 20 amends s. 497.372, F.S., to revise the duties that only a licensed funeral director may perform. The changes will result in non-licensed individuals being able to handle more clerical responsibilities, including obtaining information from families for the filing of death certificates and setting a time for services. Further, the section removes the current period during which funeral directors must direct memorial services. As a result, a funeral director would be responsible for directing any memorial service arranged by the funeral establishment following burial or cremation, regardless of when the memorial service takes place.

Section 21 amends s. 497.374, F.S. to revise the requirements for a funeral director to obtain a reciprocal license by allowing individuals licensed in another state to obtain licensure in Florida if they have a current license in that state and have practiced funeral directing for at least five years. As an alternative, a funeral directors may obtain a reciprocal license if the applicant has a diploma or certificate from an accredited program of mortuary science instead of an associate degree or higher, and meets other current requirements.

Division of State Fire Marshal

Section 22 amends s. 554.108, F.S., relating to boiler inspections, to clarify a boiler with an input of 200,000 British thermal units (Btu) per hour and above, up to an input of 400,000 Btu per hour, is exempt from inspection. However, such an exempt boiler, if manufactured after July 1, 2022, must be stamped with the American Society of Mechanical Engineers (ASME) code symbol. A requirement for ASME stamping of boilers between 200,000 and 400,000 Btu has been in the statute for several years but did not have a phase in date to allow for utilization of a manufacturer's inventory. The addition of the carbon monoxide detector requirements currently found in ch. 509, F.S., clarifies the authority of authorized third party inspectors to enforce this safety feature.

Section 23 amends s. 554.111, F.S., relating to fees, clarifies an additional amount equal to the certification inspection fees may be charged when it is necessary to make a special trip for testing and verification. In addition, this section requires an application for boiler permit to include the manufacturer's data report.

Section 24 amends s. 554.114, F.S., relating to prohibited acts and penalties, to revise compliance deadlines and penalties for an insurer authorized to sell boiler insurance that fails to inspect a boiler pursuant to the requirements of this section.

Division of Insurance Agents and Agencies

Section 29 amends s. 626.015, F.S., to relating to definitions. The definition of licensing authority is created to mean the department or the office.[144] The definition of unaffiliated appointment is revised to provide an exception to the current prohibition that an unaffiliated insurance agent may not be affiliated with an insurer, insurer-appointed insurance agent, or insurance agency contracted with or employing insurer-appointed insurance agents. This change would allow a licensed adjuster to obtain an adjuster appointment in order to adjust claims on behalf of an insurer while holding an unaffiliated appointment on an agent license.

Section 30 amends s. 626.171, F.S., relating to application for licensure, to provide the fingerprinting requirements in s. 624.34, F.S., apply to all applicants for licensure under ch. 626, F.S.

Section 31 amends s. 626.172, F.S., relating to insurance agency licensure, to clarify fingerprinting must be processed in accordance with the requirements of s. 626.171(4), F.S.

Section 32 creates s. 626.173, F.S., relating to insurance agency closure, to specify an insurance agency's responsibilities, when closing or ceasing to transact business for more than 30 days. Within 35 days after the agency first ceases to transact insurance, the agency owner or an officer listed on the original application for licensure must:

- Cancel the insurance agency's license by notifying the DFS by the submission of completed form prescribed by the DFS;

[144] In this instance department means Department of Financial Services and office refers to the Office of Insurance Regulation.

- Notify all insurers with whom the agency or agent in charge are appointed, that the agency operations have ceased, the date operations ceased, the identity of any agent or agency to whom the agency's current book of business has been transferred, and the method by which the agency records may be obtained during the time stipulated in sections 626.748 and 626.561, F.S.;
- Notify all policyholders currently insured by a policy written, produced, or serviced by the agency that the agency has ceased operations, the date the operations ceased and the identity of the agency or agent to whom the agency's current book of business was transferred. If no transfer has occurred, notification should direct the policyholder to contact the insurance company that will assist the policyholder in locating a licensed agent to service the policy;
- Notify all premium finance companies through which active policies are financed, that the agency has ceased operations, the date operations ceased and the identity of the agent or agency to whom the agency's current book of business has been transferred; and
- Ensure all funds held in a fiduciary capacity are distributed to the rightful owners.

The section provides that in a proceeding initiated pursuant to ch. 120, F.S., the DFS may, impose an administrative fine against the agent in charge or director or officer found in the proceeding to have violated any provision of this section. A proceeding may not be initiated and fine may not accrue until after the person has been notified in writing of the nature of the violation, has been afforded 10 business days to correct the violation, and has failed to do so. Fines imposed pursuant to this section may not exceed the amounts specified in s. 626.681, F.S., per violation. Further, the DFS may also suspend or revoke the license of a licensee fined pursuant to this section. The section provides factors for the DFS to consider when determining the appropriateness of the penalty.

Section 33 amends s. 626.201, F.S., relating to investigations of applicants by the DFS, provides that submission of an applicant's fingerprints must be in accordance with s. 626.171(4), F.S. Further, the section provides that the expiration, nonrenewal, or surrender of a license under ch. 626, F.S., does not eliminate jurisdiction of the licensing authority to investigate and prosecute for a violation committed by the licensee while licensed under ch. 626, F.S. Further, the section provides that notwithstanding the withdrawal of a complaint, the prosecution of any matter may be initiated or continued. According to the DFS, the expiration, nonrenewal, or surrender of a license jeopardizes the licensing authority of the DFS to continue to investigate or prosecute violations committed while an individual was licensed.[145]

Section 34 amends s. 626.202, F.S., relating to fingerprinting requirements, to require that the submission of fingerprints must be in accordance with s. 626.171(4), F.S.

Section 35 amends s. 626.221, F.S., to exempt an all-lines adjuster applicant who holds a designation as a Certified All Lines Adjuster (CALA) from Kaplan Financial Education from the statutory examination requirements.

[145] The Department of Financial Services (DFS), *2022 Legislative Bill Analysis of SB 1874* (January 18, 2022) (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

Section 36 amends s. 626.311, F.S., to provide a licensed adjuster may obtain an adjuster appointment in order to adjust claims on behalf of an insurer while holding an unaffiliated appointment on an agent license and may adjust claims and receive compensation as authorized.

Section 37 amends s. 626.321, F.S., to provide a conforming change regarding fingerprint requirements in s. 626.171(4), F.S.

Section 38 amends s. 626.601, F.S., to provide conforming amendment regarding fingerprint requirements provided in s. 626.171(4), F.S.

Section 39 amends s. 626.7845, F.S., to provide technical conforming cross reference.

Section 40 amends s. 626.8411, F.S., relating to application provisions applicable to general lines agents or agencies, to require compliance with fingerprint requirements in s. 626.172(2)(f), F.S. Subsection (2) of the section is amended to clarify that paragraph (2)(f) of s. 626.172, F.S., applies to the agent in full charge.

Section 41 amends s. 626.8412, F.S., to clarify that in addition to the agent, the insurance agency must also hold an appointment issued by an insurer in order to sell a title insurance policy.

Section 42 amends s. 626.8417, F.S., to allow an applicant for a title insurance license to fulfill the 40-hour course requirement in person or online by removing the requirement that it be a classroom course.

Section 43 amends s. 626.8421, F.S., to specify a title agent and a title agency must have a separate appointment as to each insurer by which they are appointed as agents.

Section 44 amends s. 626.843, F.S., relating to the renewal, continuation, reinstatement, or termination of a title insurance agent's or title agency's appointment, to require a title insurance agency to be appointed, as prescribed by section 624.501, F.S., until suspended, revoked, or otherwise terminated. Further, the section requires that title insurance agency appointments must be renewed pursuant to s. 626.381, F.S.

Section 45 amends s. 626.8433, F.S., relating to termination of appointments, to subject title insurance agencies to reporting terminations to the DFS.

Section 46 amends s. 626.8447, F.S., relating to effect of suspension or revocation upon other licensees and appointees, to subject title insurance agencies to the same provisions.

Section 47 amends s. 626.854, F.S., to prohibit compensation of a public adjuster being based on amounts attributable to additional living expenses, unless the insured agrees to a separate agreement with a prescribed disclosure. In addition, the section provides compensation of a public adjuster must be based on the recovery allocated to the insured for covered damages, exclusive of attorney fees and costs. The bill also prohibits increasing public adjuster compensation based on a claim being resolved by litigation.

Section 48 amends s. 626.8561, F.S, relating to the definition of the term, "public adjuster apprentice," to allow an adjusting firm to appoint, employ, or contract with a public adjuster apprentice. Currently, a public adjuster may only appoint an apprentice.

Section 49 amends s. 626.865, F.S., relating to public adjuster qualifications, to provide that a nonresident public adjuster who has been licensed and appointed on a continual basis for the previous six months to the list of licensed categories considered qualified for the public adjuster license. The section also requires that the $50,000 bond required as a condition for licensure must remain in effect for one year after the expiration or termination of the license.

Section 50 amends s. 626.8651, F.S., relating to public adjuster apprentice appointment and qualifications, to require only a public adjusting firm that has a designated primary adjuster, as required in s. 626.8695, F.S., to appoint the public adjuster apprentice, while eliminating a public all-lines adjuster's ability to appoint a public adjuster apprentice.

Further, this section requires an all lines adjuster to maintain bond coverage throughout existence of the license and for one full year after expiration or termination of the license.

Section 51 amends s. 626.8696, F.S., relating to requirements of an application for an adjusting firm license, to require the name and license number of the designated primary adjuster for each adjusting firm location as required in s. 626.8695, F.S. Further, fingerprints of each individual to be disclosed in the application (each majority owner, partner, officer, and director of the adjusting firm) must be filed with the DFS in accordance with s. 626.171(4), F.S., unless an individual is currently licensed and appointed under ch. 626, F.S. Only one of the individuals required to be listed on the application must sign the application. Currently, each owner of the firm must sign the application.

Section 52 amends s. 626.8732, F.S., relating to bond requirements for a nonresident public adjuster, to provide that the mandated bond must be maintained unimpaired throughout the existence of the license and for a period of one year following the expiration or termination of the license.

Section 53 amends s. 626.8734, F.S., relating to nonresident all-lines adjuster license qualifications, to revise the fingerprinting requirements in accordance with s. 626.17(4), F.S.

Section 57 amends s. 626.9953, F.S., relating to qualifications for registration, to provide conforming fingerprinting requirements.

Division of State Fire Marshal

Section 58 amends s. 633.135, F.S, relating to the Firefighter Assistance Grant Program, to expand the list of purchases eligible for the grant program to include:

- Other equipment and tools that improve fire safety and fire rescue capabilities for firefighters; and
- Protective clothing and equipment compliant with NFPA 1977, "Standard on Protective Clothing Equipment for Wildland Fire Fighting and Urban Interface Fire Fighting."

Section 59 amends s. 633.216, F.S., relating to inspections of buildings and equipment; training and certification requirements, to eliminate the requirement a previously certified fire safety inspector with a lapsed certification that has lapsed for eight years or more to repeat the fire safety inspector training required by the Division of State Fire Marshal. Current law requires a certificate is valid for four years and renewal is contingent upon the completion of continuing education. An exception allowing a licensee to successfully pass the examination in lieu of the training is deleted.

Section 60 amends s. 633.408, F.S., relating to training and certification, to authorize the Division of Fire Marshal to establish the requirements of the minimum standards course by rule. The section also provides technical changes.

Section 61 amends s. 633.414, F.S., relating to retention of firefighter and volunteer firefighter certifications, to provide that the renewal requirements for the special certificate of compliance is the same as a firefighter certificate of compliance. The bill also changes the definition of an active firefighter.

Section 62 amends s. 648.34, F.S., relating to qualification of bail bond agents, to revise the fingerprinting process to be in accordance with s. 626.171(4), F.S.

Section 63 amends s. 648.355, F.S., relating to temporary limited license as limited surety agent or professional bail bond agent, to revise fingerprinting requirements to conform to s. 626.171(4), F.S.

Section 64 amends s. 648.46, F.S., relating to disciplinary action against bail bond licensees, to provide the expiration, nonrenewal, or surrender of licensure under ch. 648, F.S., does not eliminate the jurisdiction of the licensing authority to investigate and prosecute for a violation committed by a licensee while licensed under this chapter. Notwithstanding the withdrawal of a complaint, the prosecution of any matter may be initiated or continued.

Florida Patient Compensation Fund

Section 65 amends s. 766.105, F.S., relating to the Florida Patient's Compensation Fund (fund), to revise operations and duties of the board of governors of the fund and the Agency for Health Care Administration (agency) relating to financial responsibility or coverage requirements and certification of such coverage. The section provides that the agency would receive and review the documents and determine compliance. The supervision of the fund is transferred from the board of governors to the Chief Financial Officer or his or her designee.

Currently, the agency must review documentation submitted by hospitals demonstrating financial responsibility to pay claims and costs arising out of the rendering or failure to render medical services and for bodily injury or property damage to a person or property arising out of the activities of the hospital, as provided in s. 766.105(2), F.S. Once the agency completes the review, the agency delivers the documents to the board of governors. At least 60 days prior to the issuance or renewal of a hospital's license, the agency must request that the board of governors certify that each hospital complies with coverage requirements. Currently, the board of governors of the Fund are responsible for the supervision and operation of the fund.

The section provides that the fund must operate subject to the supervision of the CFO or his or her designee, subject to the policies and procedures and under the auspices of the Division of Rehabilitation and Liquidation within the DFS until the DFS executes a legal dissolution of the fund on or before December 31, 2023. Prior to the legal dissolution of the fund, DFS must:

- Obtain all existing records and retain necessary records of the fund pursuant to law;
- Identify all remaining property held by the fund and attempt to return such property to its owners and, for property that cannot be returned to the owner, transfer such property to the Division of Unclaimed Property within the DFS;
- Make a final accounting of the finances of the fund;
- Ensure that the fund has met all its obligations pursuant to structured settlements, annuities, or other instruments established to pay covered claims, and, if the fund has not done so, attempt to meet such obligations before final and complete dissolution of the fund;
- Sell or otherwise dispose of all physical assets of the fund;
- Execute a legal dissolution of the fund; and
- Transfer any remaining money or assets of the fund to the CFO for deposit in the General Revenue Fund.

The section also provides s. 766.105, F.S., is repealed effective January 1, 2024, thereby terminating the Florida Patient's Compensation Fund.

Section 11 creates ss. 395.1061 and **section 66 and 67** amend s. 945.6041, F.S., and 985.6441, F.S., respectively, to provide conforming changes relating to the repeal of s. 766.105, F.S., and transferring a provision relating to health care providers and their financial responsibility in complying with professional liability requirements. The provision is being transferred to s. 395.1061, F.S., because the bill repeals the current provision in s. 766.105, F.S., effective January 1, 2024.

Section 68 provides that, except as otherwise expressly provided in this act, this act 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:

The bill eliminates the current maximum fee of $50 to consumers for the transference of burial rights.

Reducing the penalty calculation period and increasing credits for businesses that fail to comply with the workers' compensation law, so long as the business has not previously failed to provide workers' compensation coverage for its employees, should reduce the cost of non-compliance for small businesses, particularly those in the construction industry.

Exempting schedules of maximum reimbursement for ambulatory surgical centers, healthcare providers, and hospitals from legislative ratification likely would result in increased fees to providers of healthcare, but could also force insurers to request rate increases to pay such costs.

Permitting payroll audits by mail, rather than in person, for employers in the construction industry that have an estimated annual workers' compensation premium of less than $10,000 could result in modest cost savings for insurance carriers.

Permitting unaffiliated insurance agents to adjust claims, so long as the agent is also a licensed adjuster, could create employment opportunities for persons who hold both licenses and increase the pool of adjusters who can respond in the aftermath of a large storm or catastrophic event.

Terminating the Florida Patient's Compensation Fund (fund) could result in refunds to doctors and hospitals that were members of the fund in the late 1970s and early 1980s.

C. Government Sector Impact:

The bill may have insignificant but indeterminate impact on state revenues and expenditures.

Service of Process

The Department of Financial Services (DFS) is required to create a secure online portal as the sole means to accept service of process on the CFO under **Section 2** and **Sections 25-28**. The current online portal will meet this requirement. The DFS has

indicated any information technology impact can be absorbed within existing resources.[146]

Workers' Compensation Insurance

The implementation of CS/SB 1874 will reduce penalties imposed on employers that do not comply with the workers' compensation insurance coverage requirements. The fiscal impact is unknown.

Firefighter Cancer Assistance Grant

The changes made to the Firefighter Assistance Grant program will allow the program to fund additional necessary tools and equipment to firefighters.

Florida Patients' Compensation Fund

Terminating the Florida Patient's Compensation Fund could result in refunds to doctors and hospitals that were members of the Fund in the late 1970s and early 1980s. In addition, the bill allows for the transfer of any remaining money or assets, after all obligations have been met, to be deposited in the General Revenue Fund.

VI. Technical Deficiencies:

Section 9 amends local governmental entities annual financial reports. The Chief Financial Officer required all work product on the Florida Open Financial Statement System to be completed by December 31, 2021, including the recruitment and selection of contractors to build the eXtensible Business Reporting Language (XBRL) taxonomies and software tools. The section may need to be updated to reflect and conform to the completion of such deadlines.

Section 29 creates a definition for the term, "licensing authority." The term means the respective jurisdiction of the department or the office, as provided by law. **Sections 33 and 63** of the bill amends s. 626.201, F.S., and uses the term, "licensing authority." Other existing provisions in the Florida Insurance Code use the term, "department or office." Currently, the term licensing authority is used in ss. 626.8732 and 626.8734, F.S., in the context of a licensing authority of another state. The replacement of the term, "licensing authority," with "department or office" in **Sections 33 and 65**, and the removal of the definition of "licensing authority" in **Section 29** would provide greater clarity and consistency with the use of the term, "licensing authority," in current law.

VII. Related Issues:

None.

[146] The Department of Financial Services (DFS), *2022 Legislative Bill Analysis of SB 1874* (January 18, 2022) (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 48.151, 110.123, 110.131, 120.541, 215.34, 215.93, 215.94, 216.102, 218.32, 440.02, 440.05, 440.107, 440.13, 440.185, 440.381, 497.277, 497.369, 497.372, 497.374, 554.108, 554.111, 554.114, 624.307, 624.422, 624.423, 624.610, 626.015, 626.171, 626.172, 626.201, 626.202, 626.221, 626.311, 626.321, 626.601, 626.7845, 626.8411, 626.8412, 626.8417, 626.8421, 626.843, 626.8433, 626.8447, 626.854, 626.8561, 626.865, 626.8651, 626.8696, 626.8732, 626.8734, 626.906, 626.912, 626.937, 626.9953, 633.135, 633.216, 633.408, 633.414, 648.34, 648.355, 648.46, 766.105, 945.6041, and 985.6441.

This bill creates the following sections of the Florida Statutes: 395.1061 and 626.173.

This bill repeals section 17.035 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.)

PCS (565284) by Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government):
The proposed committee substitute retains the Stop Inmate Fraud Program within the Department of Financial Services.

CS by Banking and Insurance on January 25, 2022:

- Revises compensation for public adjuster by requiring that the compensation must be based on the recovery allocated to the insured for covered damage, exclusive of attorney fee and costs.
- Revises service of process requirements and provides conforming changes relating to service of process.
- Transfers responsibilities of the Florida Patient's Compensation Fund relating to hospitals demonstrating financial responsibility for maintaining professional liability coverage to the Agency for Health Care Administration.
- Revising requirements for closing an insurance agency.
- Provides technical changes.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2022	.	
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The Committee on Appropriations (Boyd) recommended the following:

Senate Amendment (with title amendment)

Delete lines 431 - 461.
Delete lines 905 - 1064.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 21 - 23
and insert:
cross-reference; amending s. 215.34, F.S.;


325996

Delete lines 75 - 78

and insert:

amending s. 440.185,


565284

576-03289-22

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Agriculture, Environment, and General Government)

A bill to be entitled

An act relating to the Department of Financial Services; repealing s. 17.0315, F.S., relating to the financial and cash management system and task force; amending s. 48.151, F.S.; providing an exception to service of process on public entities under certain circumstances; deleting the Chief Financial Officer's assistant or deputy or another person in charge of the office as agents for service of process on insurers; requiring the Department of Financial Services to create a secure online portal as the sole means to accept certain service of process; amending s. 110.123, F.S.; revising definitions; authorizing specified persons relating to the Division of Rehabilitation and Liquidation to purchase coverage in a state group health insurance plan at specified premium costs; providing that the enrollment period for the state group insurance program begins with a specified plan year for certain persons relating to the division; amending s. 110.131, F.S.; conforming a cross-reference; amending s. 120.541, F.S.; revising applicability of certain provisions relating to a specified proposed rule; amending s. 215.34, F.S.; deleting the requirement for specified entities receiving certain charged-back items to prepare a journal transfer; amending s. 215.93, F.S.; renaming a


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576-03289-22

subsystem of the Florida Financial Management Information System; amending s. 215.94, F.S.; conforming a provision to changes made by the act; amending s. 216.102, F.S.; making technical changes; amending s. 218.32, F.S.; revising legislative intent; providing functions of the Florida Open Financial Statement System; requiring local governments to use the system to file specified reports; providing requirements for the system; revising the list of entities with which the Chief Financial Officer may consult with regard to the system; authorizing, rather than requiring, certain local governmental financial statements to be filed in a specified format; deleting certain requirements for such statements; providing construction; providing an exception; creating s. 395.1061, F.S.; defining terms; requiring certain hospitals to demonstrate financial responsibility for maintaining professional liability coverage; specifying requirements for such financial responsibility; requiring hospitals to provide evidence of compliance and to remain in compliance; prohibiting the Agency for Health Care Administration from issuing or renewing licenses of hospitals under certain circumstances; providing exemptions from professional liability coverage requirements; authorizing hospital systems to meet such professional liability coverage requirements in a specified manner; amending s. 440.02, F.S.; revising the definition of the term "employer"; amending s. 440.05, F.S.;

revising information that must be submitted with the notice of election to be exempt from workers' compensation coverage; specifying the circumstances under which the Department of Financial Services is required to send certain notifications to workers' compensation carriers; requiring such notifications to be electronic; requiring certificates of election to be exempt to contain a specified notice; deleting a provision requiring certain corporation officers to maintain business records; revising applicability of certificates of election to be exempt; amending s. 440.107, F.S.; revising the timeframe for certain employers to produce specified records under certain circumstances; prohibiting employers who failed to secure payment of workers' compensation from entering a payment agreement schedule with the department unless a specified condition is met; revising circumstances that result in immediate reinstatement of stop-work orders; revising penalty assessments; amending s. 440.13, F.S.; revising statewide schedules of maximum reimbursement allowances for medically necessary treatment, care, and attendance; authorizing the department to adopt rules; amending s. 440.185, F.S.; revising the timeline and methods for workers' compensation carriers to send a certain informational brochure to injured workers; revising methods by which such informational brochure is sent to employers; amending s. 440.381, F.S.; specifying workers' compensation policies that require physical onsite

audits for a specified class; amending s. 497.277, F.S.; deleting a cap on transferring burial rights fees; amending s. 497.369, F.S.; revising requirements for licenses by endorsement to practice embalming; amending s. 497.372, F.S.; revising the scope of funeral directing practice; amending s. 497.374, F.S.; revising requirements for licenses by endorsement to practice funeral directing; amending s. 554.108, F.S.; requiring boilers manufactured after a specified date, rather than boilers of certain heat input, to be stamped with a specified code symbol; revising the boilers' information that must be filed; requiring that specified spaces and rooms be equipped with carbon monoxide detector devices; amending s. 554.111, F.S.; deleting a requirement for a specified fee for a certificate of competency; requiring applications for boiler permits to include a specified report; revising the purpose for special trips that the department is required to make for boiler inspections; amending s. 554.114, F.S.; revising the schedules of penalties against boiler insurance companies, inspection agencies, and other persons for specified violations; amending s. 624.307, F.S.; providing that certain regulated persons or unauthorized insurers are required to appoint the Chief Financial Officer as their agents, rather than as their attorneys, to receive service of legal process; revising the method by which the Chief Financial Officer makes the process available; requiring the Chief Financial Officer to

promptly send notice of receipt of service of process; revising requirements for the contents of such notice; amending s. 624.422, F.S.; requiring insurers to file with the department e-mail addresses, rather than addresses, of specified persons; providing that a specified method by which process is served upon the Chief Financial Officer is the sole method of service; conforming provisions to changes made by the act; amending s. 624.423, F.S.; revising procedures for service of process; requiring the Chief Financial Officer to promptly notify certain persons of the process and to make the process available to such persons through specified means; revising the method by which records are retained; amending s. 624.610, F.S.; conforming provisions to changes made by the act; amending s. 626.015, F.S.; defining the term "licensing authority"; revising the definition of the term "unaffiliated insurance agent"; amending s. 626.171, F.S.; requiring fingerprints for certain licenses to be processed in accordance with specified laws; amending s. 626.172, F.S.; revising the method by which fingerprints for applications for insurance agency licenses are submitted; deleting a fingerprint processing fee; creating s. 626.173, F.S.; providing duties for certain insurance agency persons within a specified timeframe after cessation of insurance transactions; authorizing the department to impose administrative fines against such persons for specified violations; prohibiting the initiation of

certain proceedings and imposition of fines until specified prerequisites are completed; providing a cap on such fines; authorizing the department to suspend or revoke licenses under certain circumstances; providing requirements for determining penalties and remedies; amending s. 626.201, F.S.; conforming a provision to changes made by the act; providing continuation of jurisdiction of the licensing authority to investigate and prosecute specified violations under certain circumstances; amending s. 626.202, F.S.; conforming provisions to changes made by the act; amending s. 626.221, F.S.; adding a designation to the list of designations that allow applicants for an all-lines adjuster license to be exempt from an examination; amending s. 626.311, F.S.; providing an exception to the prohibition against unaffiliated insurance agents holding appointments from insurers; authorizing certain adjusters to obtain adjuster appointments while maintaining unaffiliated insurance agent appointments and to adjust claims and receive certain compensation; amending ss. 626.321 and 626.601, F.S.; conforming provisions to changes made by the act; amending s. 626.7845, F.S.; conforming a cross-reference; amending ss. 626.8411 and 626.8412, F.S.; conforming provisions to changes made by the act; amending s. 626.8417, F.S.; revising requirements to qualify for title insurance agent licenses; amending s. 626.8421, F.S.; requiring title agencies to have separate appointments under certain

circumstances; amending s. 626.843, F.S.; providing requirements for appointments of title insurance agencies; amending s. 626.8433, F.S.; requiring title insurers that terminate appointments of title insurance agencies to file certain information with the department; amending s. 626.8447, F.S.; providing effects of suspension or revocation of title insurance agency licenses; amending s. 626.854, F.S.; revising and providing restrictions on public adjuster compensation; providing exceptions to such restrictions; amending s. 626.8561, F.S.; revising the definition of the term "public adjuster apprentice"; amending s. 626.865, F.S.; revising requirements to qualify for public adjuster licenses; requiring that certain bonds remain in effect for a specified period after expiration of the license; amending s. 626.8651, F.S.; requiring that certain bonds remain in effect for a specified period after expiration of a public adjuster apprentice license; revising requirements for public adjuster apprentices to be, act as, or hold themselves out to be public adjuster apprentices; amending s. 626.8696, F.S.; revising requirements for adjusting firm license applications; amending s. 626.8732, F.S.; requiring applicants for nonresident public adjuster licenses to maintain certain bonds after the expiration or termination of licenses; amending ss. 626.8734, 626.906, 626.912, 626.937, and 626.9953, F.S.; conforming provisions to changes made by the act; amending s. 633.135, F.S.; providing

additional uses for firefighter funds; amending s. 633.216, F.S.; revising requirements for renewal of firesafety inspector certificates; amending s. 633.408, F.S.; revising requirements for the issuance of a Firefighter Certificate of Compliance and Special Certificate of Compliance; deleting provisions relating to requirements to retain a Special Certificate of Compliance; amending s. 633.414, F.S.; providing requirements to retain a Special Certificate of Compliance; revising requirements to retain a Firefighter Certificate of Compliance; redefining the term "active"; amending ss. 648.34 and 648.355, F.S.; conforming provisions to changes made by the act; amending s. 648.46, F.S.; providing continuation of jurisdiction of the licensing authority to investigate and prosecute specified violations under certain circumstances; amending s. 766.105, F.S.; deleting requirements and procedures for the certification of hospital compliance with the Florida Patient's Compensation Fund; providing that the fund is subject to the supervision and approval of the Chief Financial Officer or his or her designee, rather than the board of governors; conforming provisions to changes made by the act; providing for supervision of the fund until dissolution; specifying duties of the Department of Financial Services before dissolution of the fund; providing for future repeal; amending ss. 945.6041 and 985.6441, F.S.; revising the definition of the term "health care provider"; defining the term "other

medical facility"; providing effective dates.

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

Section 1. Section 17.0315, Florida Statutes, is repealed.

Section 2. Subsections (1) and (3) of section 48.151, Florida Statutes, are amended to read:

48.151 Service on statutory agents for certain persons.—

(1) When any law designates a public officer, board, agency, or commission as the agent for service of process on any person, firm, or corporation, service of process thereunder shall be made by leaving one copy of the process with the public officer, board, agency, or commission or in the office thereof, or by mailing one copy to the public officer, board, agency, or commission, except as provided in subsection (3). The public officer, board, agency, or commission so served shall retain a record copy and promptly send the copy served, by registered or certified mail, to the person to be served as shown by his or her or its records. Proof of service on the public officer, board, agency, or commission shall be by a notice accepting the process which shall be issued by the public officer, board, agency, or commission promptly after service and filed in the court issuing the process. The notice accepting service shall state the date upon which the copy of the process was mailed by the public officer, board, agency, or commission to the person being served and the time for pleading prescribed by the rules of procedure shall run from this date. The service is valid service for all purposes on the person for whom the public officer, board, agency, or commission is statutory agent for

service of process.

(3) The Chief Financial Officer ~~or his or her assistant or deputy or another person in charge of the office~~ is the agent for service of process on all insurers applying for authority to transact insurance in this state, all licensed nonresident insurance agents, all nonresident disability insurance agents licensed pursuant to s. 626.835, any unauthorized insurer under s. 626.906 or s. 626.937, domestic reciprocal insurers, fraternal benefit societies under chapter 632, warranty associations under chapter 634, prepaid limited health service organizations under chapter 636, and persons required to file statements under s. 628.461. ~~As an alternative to service of process made by mail or personal service on the Chief Financial Officer, on his or her assistant or deputy, or on another person in charge of the office,~~ The Department of Financial Services shall ~~may~~ create a secure online portal as the sole means ~~an Internet-based transmission system~~ to accept service of process on the Chief Financial Officer under this section ~~by electronic transmission of documents~~.

Section 3. Present subsections (9) through (13) of section 110.123, Florida Statutes, are redesignated as subsections (10) through (14), respectively, a new subsection (9) is added to that section, and paragraphs (b), (c), (f), (h), (i), and (o) of subsection (2) and paragraph (i) of subsection (5) are amended, to read:

110.123 State group insurance program.—

(2) DEFINITIONS.—As used in ss. 110.123-110.1239, the term:

(b) "Enrollee" means all state officers and employees, retired state officers and employees, surviving spouses of

deceased state officers and employees, and terminated employees or individuals with continuation coverage who are enrolled in an insurance plan offered by the state group insurance program. The term ~~"Enrollee"~~ includes all state university officers and employees, retired state university officers and employees, surviving spouses of deceased state university officers and employees, and terminated state university employees or individuals with continuation coverage who are enrolled in an insurance plan offered by the state group insurance program. As used in this paragraph, state employees and retired state employees also include employees and retired employees of the Division of Rehabilitation and Liquidation.

(c) "Full-time state employees" means employees of all branches or agencies of state government holding salaried positions who are paid by state warrant or from agency funds and who work or are expected to work an average of at least 30 ~~or more~~ hours per week; employees of the Division of Rehabilitation and Liquidation who work or are expected to work an average of at least 30 hours per week; employees paid from regular salary appropriations for 8 months' employment, including university personnel on academic contracts; and employees paid from other-personal-services (OPS) funds as described in subparagraphs 1. and 2. The term includes all full-time employees of the state universities. The term does not include seasonal workers who are paid from OPS funds.

1. For persons hired before April 1, 2013, the term includes any person paid from OPS funds who:

a. Has worked an average of at least 30 hours or more per week during the initial measurement period from April 1, 2013,

through September 30, 2013; or

b. Has worked an average of at least 30 hours or more per week during a subsequent measurement period.

2. For persons hired after April 1, 2013, the term includes any person paid from OPS funds who:

a. Is reasonably expected to work an average of at least 30 hours or more per week; or

b. Has worked an average of at least 30 hours or more per week during the person's measurement period.

(f) "Part-time state employee" means an employee of any branch or agency of state government paid by state warrant from salary appropriations or from agency funds, or an employee of the Division of Rehabilitation and Liquidation, ~~and~~ who is employed for less than an average of 30 hours per week or, if on academic contract or seasonal or other type of employment which is less than year-round, is employed for less than 8 months during any 12-month period, but does not include a person paid from other-personal-services (OPS) funds. The term includes all part-time employees of the state universities.

(h) "Retired state officer or employee" or "retiree" means any state or state university officer or employee, or, beginning with the 2023 plan year, an employee of the Division of Rehabilitation and Liquidation, who retires under a state retirement system or a state optional annuity or retirement program or is placed on disability retirement, and who was insured under the state group insurance program or the Division of Rehabilitation and Liquidation's group insurance program at the time of retirement, and who begins receiving retirement benefits immediately after retirement from state or state

university office or employment. The term also includes any state officer or state employee who retires under the Florida Retirement System Investment Plan established under part II of chapter 121 if he or she:

1. Meets the age and service requirements to qualify for normal retirement as set forth in s. 121.021(29); or

2. Has attained the age specified by s. 72(t)(2)(A)(i) of the Internal Revenue Code and has 6 years of creditable service.

(i) "State agency" or "agency" means any branch, department, or agency of state government. "State agency" or "agency" includes any state university and the Division of Rehabilitation and Liquidation for purposes of this section only.

(o) "Surviving spouse" means the widow or widower of a deceased state officer, full-time state employee, part-time state employee, or retiree if such widow or widower was covered as a dependent under the state group health insurance plan, TRICARE supplemental insurance plan, ~~or~~ a health maintenance organization plan established pursuant to this section, or the Division of Rehabilitation and Liquidation's group insurance program at the time of the death of the deceased officer, employee, or retiree. "Surviving spouse" also means any widow or widower who is receiving or eligible to receive a monthly state warrant from a state retirement system as the beneficiary of a state officer, full-time state employee, or retiree who died prior to July 1, 1979. For the purposes of this section, any such widow or widower shall cease to be a surviving spouse upon his or her remarriage.

(5) DEPARTMENT POWERS AND DUTIES.—The department is

responsible for the administration of the state group insurance program. The department shall initiate and supervise the program as established by this section and shall adopt such rules as are necessary to perform its responsibilities. To implement this program, the department shall, with prior approval by the Legislature:

(i) Contract with a single custodian to provide services necessary to implement and administer the health savings accounts authorized in subsection (13) ~~(12)~~.

Final decisions concerning enrollment, the existence of coverage, or covered benefits under the state group insurance program shall not be delegated or deemed to have been delegated by the department.

(9) COVERAGE AND ENROLLMENT PERIOD FOR EMPLOYEES, RETIREES, AND WIDOWS AND WIDOWERS OF EMPLOYEES AND RETIREES OF THE DIVISION OF REHABILITATION AND LIQUIDATION.—

(a) Beginning with the 2023 plan year:

1. A retired employee insured under the Division of Rehabilitation and Liquidation's group insurance program, or a widow or widower of an employee or of a retired employee of the Division of Rehabilitation and Liquidation who is covered as a dependent under the Division of Rehabilitation and Liquidation's group insurance program, may purchase coverage in a state group health insurance plan at the same premium cost as that for a retiree or a surviving spouse, respectively, enrolled in the state group insurance program.

2. A terminated employee of the Division of Rehabilitation and Liquidation or an individual with continuation coverage who

is insured under the Division of Rehabilitation and Liquidation's group insurance program may purchase coverage in a state group health insurance plan at the same premium cost as that for a terminated employee or an individual with continuation coverage, respectively, enrolled in the state group insurance program.

(b) The enrollment period for the state group insurance program begins with the 2023 plan year for:

1. Current and retired employees of the Division of Rehabilitation and Liquidation.

2. Widows and widowers of employees and of retired employees of the Division of Rehabilitation and Liquidation.

3. Terminated employees of the Division of Rehabilitation and Liquidation or individuals with continuation coverage who are insured under the Division of Rehabilitation and Liquidation's group insurance program.

Section 4. Subsection (5) of section 110.131, Florida Statutes, is amended to read:

110.131 Other-personal-services employment.—

(5) Beginning January 1, 2014, an other-personal-services (OPS) employee who has worked an average of at least 30 or more hours per week during the measurement period described in s. 110.123(14)(c) or (d) ~~s. 110.123(13)(c) or (d)~~, or who is reasonably expected to work an average of at least 30 or more hours per week following his or her employment, is eligible to participate in the state group insurance program as provided under s. 110.123.

Section 5. Paragraph (d) is added to subsection (4) of section 120.541, Florida Statutes, and paragraph (a) of

subsection (2) and subsection (3) of that section are republished, to read:

120.541 Statement of estimated regulatory costs.—

(2) A statement of estimated regulatory costs shall include:

(a) An economic analysis showing whether the rule directly or indirectly:

1. Is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within 5 years after the implementation of the rule;

2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within 5 years after the implementation of the rule; or

3. Is likely to increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

(3) If the adverse impact or regulatory costs of the rule exceed any of the criteria established in paragraph (2)(a), the rule shall be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the next regular legislative session, and the rule may not take effect until it is ratified by the Legislature.

(4) Subsection (3) does not apply to the adoption of:

(d) Schedules of maximum reimbursement allowances by the three-member panel which are expressly authorized by s. 440.13.

Section 6. Subsection (1) of section 215.34, Florida Statutes, is amended to read:

215.34 State funds; noncollectible items; procedure.—

(1) Any check, draft, or other order for the payment of money in payment of any licenses, fees, taxes, commissions, or charges of any sort authorized to be made under the laws of the state and deposited in the State Treasury as provided herein, which may be returned for any reason by the bank or other payor upon which same shall have been drawn shall be forthwith returned by the Chief Financial Officer for collection to the state officer, the state agency, or the entity of the judicial branch making the deposit. In such case, the Chief Financial Officer may issue a debit memorandum charging an account of the agency, officer, or entity of the judicial branch which originally received the payment. The original of the debit memorandum shall state the reason for the return of the check, draft, or other order and shall accompany the item being returned to the officer, agency, or entity of the judicial branch being charged. The officer, agency, or entity of the judicial branch receiving the charged-back item shall ~~prepare a journal transfer which shall~~ debit the charge against the fund or account to which the same shall have been originally credited. Such procedure for handling noncollectible items shall not be construed as paying funds out of the State Treasury without an appropriation, but shall be considered as an administrative procedure for the efficient handling of state records and accounts.

Section 7. Paragraph (c) of subsection (1) of section 215.93, Florida Statutes, is amended to read:

215.93 Florida Financial Management Information System.—

(1) To provide the information necessary to carry out the intent of the Legislature, there shall be a Florida Financial Management Information System. The Florida Financial Management Information System shall be fully implemented and shall be upgraded as necessary to ensure the efficient operation of an integrated financial management information system and to provide necessary information for the effective operation of state government. Upon the recommendation of the coordinating council and approval of the board, the Florida Financial Management Information System may require data from any state agency information system or information subsystem or may request data from any judicial branch information system or information subsystem that the coordinating council and board have determined to have statewide financial management significance. Each functional owner information subsystem within the Florida Financial Management Information System shall be developed in such a fashion as to allow for timely, positive, preplanned, and prescribed data transfers between the Florida Financial Management Information System functional owner information subsystems and from other information systems. The principal unit of the system shall be the functional owner information subsystem, and the system shall include, but shall not be limited to, the following:

(c) Financial ~~Cash~~ Management Subsystem.

Section 8. Subsection (3) of section 215.94, Florida Statutes, is amended to read:

215.94 Designation, duties, and responsibilities of functional owners.—

(3) The Chief Financial Officer shall be the functional owner of the Financial ~~Cash~~ Management Subsystem. The Chief Financial Officer shall design, implement, and operate the subsystem in accordance with the provisions of ss. 215.90-215.96. The subsystem shall include, but shall not be limited to, functions for:

(a) Recording and reconciling credits and debits to treasury fund accounts.

(b) Monitoring cash levels and activities in state bank accounts.

(c) Monitoring short-term investments of idle cash.

(d) Administering the provisions of the Federal Cash Management Improvement Act of 1990.

Section 9. Subsection (3) of section 216.102, Florida Statutes, is amended to read:

216.102 Filing of financial information; handling by Chief Financial Officer; penalty for noncompliance.—

(3) The Chief Financial Officer shall:

(a) Prepare and furnish to the Auditor General annual financial statements for the state on or before December 31 of each year, using generally accepted accounting principles.

(b) Prepare and publish an annual ~~a~~ comprehensive ~~annual~~ financial report for the state in accordance with generally accepted accounting principles on or before February 28 of each year.

(c) Furnish the Governor, the President of the Senate, and the Speaker of the House of Representatives with a copy of the annual comprehensive ~~annual~~ financial report prepared pursuant to paragraph (b).

(d) Notify each agency and the judicial branch of the data that is required to be recorded to enhance accountability for tracking federal financial assistance.

(e) Provide reports, as requested, to executive or judicial branch entities, the President of the Senate, the Speaker of the House of Representatives, and the members of the Florida Congressional Delegation, detailing the federal financial assistance received and disbursed by state agencies and the judicial branch.

(f) Consult with and elicit comments from the Executive Office of the Governor on changes to the Florida Accounting Information Resource Subsystem which clearly affect the accounting of federal funds, so as to ensure consistency of information entered into the Federal Aid Tracking System by state executive and judicial branch entities. While efforts shall be made to ensure the compatibility of the Florida Accounting Information Resource Subsystem and the Federal Aid Tracking System, any successive systems serving identical or similar functions shall preserve such compatibility.

The Chief Financial Officer may furnish and publish in electronic form the financial statements and the annual comprehensive ~~annual~~ financial report required under paragraphs (a), (b), and (c).

Section 10. Paragraph (h) of subsection (1) of section 218.32, Florida Statutes, is amended, and paragraph (i) is added to that subsection, to read:

218.32 Annual financial reports; local governmental entities.—



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(1)

(h) ~~It is the intent of the Legislature to create~~ The Florida Open Financial Statement System must serve as~~,~~ an interactive repository for governmental financial statements. This system serves as the primary reporting location for government financial information. A local government shall use the system to file with the department copies of all audit reports compiled pursuant to ss. 11.45 and 218.39. The system must be accessible to the public and must be open to inspection at all times by the Legislature, the Auditor General, and the Chief Inspector General.

1. The Chief Financial Officer may consult with stakeholders with regard to~~, including the department, the Auditor General, a representative of a municipality or county, a representative of a special district, a municipal bond investor, and an information technology professional employed in the private sector, for input on the design and implementation of~~ the Florida Open Financial Statement System.

2. The Chief Financial Officer may choose contractors to build one or more eXtensible Business Reporting Language (XBRL) taxonomies suitable for state, county, municipal, and special district financial filings and to create a software tool that enables financial statement filers to easily create XBRL documents consistent with such taxonomies. The Chief Financial Officer must recruit and select contractors through an open request for proposals process pursuant to chapter 287.

3. The Chief Financial Officer must require that all work products be completed no later than December 31, 2021.

4. If the Chief Financial Officer deems the work products



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adequate, all local governmental financial statements for fiscal years ending on or after September 1, 2022, may ~~must~~ be filed in XBRL format as prescribed by the Chief Financial Officer ~~and must meet the validation requirements of the relevant taxonomy~~.

5. A local government that begins filing in XBRL format may not be required to make filings in Portable Document Format.

(i) Each local governmental entity that enters all required information in the Florida Open Financial Statement System is deemed to be compliant with this section, except as otherwise provided in this section.

Section 11. Section 395.1061, Florida Statutes, is created to read:

395.1061 Professional liability coverage.—

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

(a) "Committee" means a committee or board of a hospital established to make recommendations, policies, or decisions regarding patient institutional utilization, patient treatment, or institutional staff privileges or to perform other administrative or professional purposes or functions.

(b) "Covered individuals" means the officers; trustees; volunteer workers; trainees; committee members, including physicians, osteopathic physicians, podiatric physicians, and dentists; and employees of the hospital other than employed physicians licensed under chapter 458, physician assistants licensed under chapter 458, osteopathic physicians licensed under chapter 459, dentists licensed under chapter 466, and podiatric physicians licensed under chapter 461. However, with respect to a hospital, the term also includes house physicians, interns, employed physician residents in a resident training

program, and physicians performing purely administrative duties for the hospital instead of treating patients. The coverage applies to the hospital and those included in the definition of health care provider as provided in s. 985.6441(1).

(c) "Hospital system" means two or more hospitals associated by common ownership or corporate affiliation.

(d) "House physician" means any physician, osteopathic physician, podiatric physician, or dentist at a hospital, except:

1. The physician, osteopathic physician, podiatric physician, or dentist who has staff privileges at a hospital, provides emergency room services, or performs a medical or dental service for a fee; or

2. An anesthesiologist, a pathologist, or a radiologist.

(e) "Occurrence" means an accident or incident, including continuous or repeated exposure to certain harmful conditions, which results in patient injuries.

(f) "Per claim" means all claims per patient arising out of an occurrence.

(2) Each hospital, unless exempted under paragraph (3)(b), must demonstrate financial responsibility for maintaining professional liability coverage to pay claims and costs ancillary thereto arising out of the rendering of or failure to render medical care or services and for bodily injury or property damage to the person or property of any patient arising out of the activities of the hospital or arising out of the activities of covered individuals, to the satisfaction of the agency, by meeting one of the following requirements:

(a) Establish an escrow account in an amount equivalent to

$10,000 per claim for each bed in such hospital, not to exceed a $2.5 million annual aggregate.

(b) Obtain professional liability coverage in an amount equivalent to $10,000 or more per claim for each bed in such hospital from a private insurer, from the Joint Underwriting Association established under s. 627.351(4), or through a plan of self-insurance as provided in s. 627.357. However, a hospital may not be required to obtain such coverage in an amount exceeding a $2.5 million annual aggregate.

(3)(a) Each hospital, unless exempted under paragraph (b), shall provide evidence of compliance and remain in continuous compliance with the professional liability coverage provisions of this section. The agency may not issue or renew the license of any hospital that does not provide evidence of compliance or that provides evidence of insufficient coverage.

(b) Any hospital operated by an agency, subdivision, or instrumentality of the state is exempt from the provisions of this section.

(4) A hospital system may meet the professional liability coverage requirement with an escrow account, insurance, or self-insurance policies if the $10,000 per claim and $2.5 million annual aggregate are met for each hospital in the hospital system.

Section 12. Paragraph (a) of subsection (16) of section 440.02, Florida Statutes, is amended to read:

440.02 Definitions.—When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(16)(a) "Employer" means the state and all political


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subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustees of any person. The term ~~"Employer"~~ also includes employment agencies and~~,~~ employee leasing companies that~~, and similar agents who~~ provide employees to other business entities or persons. If the employer is a corporation, parties in actual control of the corporation, including, but not limited to, the president, officers who exercise broad corporate powers, directors, and all shareholders who directly or indirectly own a controlling interest in the corporation, are considered the employer for the purposes of ss. 440.105, 440.106, and 440.107.

Section 13. Effective January 1, 2023, subsections (3), (4), (10), and (12) of section 440.05, Florida Statutes, are amended to read:

440.05 Election of exemption; revocation of election; notice; certification.—

(3) The notice of election to be exempt must be electronically submitted to the department by the officer of a corporation who is allowed to claim an exemption as provided by this chapter and must list the name, date of birth, valid driver license number or Florida identification card number, and all certified or registered licenses issued pursuant to chapter 489 held by the person seeking the exemption, the registration number of the corporation filed with the Division of Corporations of the Department of State, and the percentage of ownership evidencing the required ownership under this chapter. The notice of election to be exempt must identify each corporation that employs the person electing the exemption and


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must list the ~~social security number or~~ federal tax identification number of each such employer and the additional documentation required by this section. In addition, the notice of election to be exempt must provide that the officer electing an exemption is not entitled to benefits under this chapter, must provide that the election does not exceed exemption limits for officers provided in s. 440.02, ~~and~~ must certify that any employees of the corporation whose officer elects an exemption are covered by workers' compensation insurance, and must certify that the officer electing an exemption has completed an online workers' compensation coverage and compliance tutorial developed by the department. Upon receipt of the notice of the election to be exempt, receipt of all application fees, and a determination by the department that the notice meets the requirements of this subsection, the department shall issue a certification of the election to the officer, unless the department determines that the information contained in the notice is invalid. The department shall revoke a certificate of election to be exempt from coverage upon a determination by the department that the person does not meet the requirements for exemption or that the information contained in the notice of election to be exempt is invalid. The certificate of election must list the name of the corporation listed in the request for exemption. A new certificate of election must be obtained each time the person is employed by a new or different corporation that is not listed on the certificate of election. Upon written request from a workers' compensation carrier, the department shall send thereafter an electronic notification to the carrier identifying each of its policyholders for which a notice of election to be

exempt has been issued or for which a notice of revocation to be exempt has been received ~~A notice of the certificate of election must be sent to each workers' compensation carrier identified in the request for exemption~~. Upon filing a notice of revocation of election, an officer who is a subcontractor or an officer of a corporate subcontractor must notify her or his contractor. ~~Upon revocation of a certificate of election of exemption by the department, the department shall notify the workers' compensation carriers identified in the request for exemption.~~

(4) The notice of election to be exempt from the provisions of this chapter must contain a notice that clearly states in substance the following: "Any person who, knowingly and with intent to injure, defraud, or deceive the department or any employer or employee, insurance company, or any other person, files a notice of election to be exempt containing any false or misleading information is guilty of a felony of the third degree." Each person filing a notice of election to be exempt shall personally sign the notice and attest that he or she has reviewed, understands, and acknowledges the foregoing notice. The certificate of election to be exempt must contain the following notice: "This certificate of election to be exempt is NOT a license issued by the Department of Business and Professional Regulation (DBPR). To determine if the certificateholder is required to have a license to perform work or to verify the license of the certificateholder, go to (insert DBPR's website address for where to find this information)."

~~(10) Each officer of a corporation who is actively engaged in the construction industry and who elects an exemption from this chapter shall maintain business records as specified by the~~

~~department by rule.~~

(11)~~(12)~~ Certificates of election to be exempt issued under subsection (3) ~~shall~~ apply only to the corporate officer named on the notice of election to be exempt ~~and apply only within the scope of the business or trade listed on the notice of election to be exempt~~.

Section 14. Effective January 1, 2023, paragraphs (a) and (d) of subsection (7) of section 440.107, Florida Statutes, are amended to read:

440.107 Department powers to enforce employer compliance with coverage requirements.—

(7)(a) Whenever the department determines that an employer who is required to secure the payment to his or her employees of the compensation provided for by this chapter has failed to secure the payment of workers' compensation required by this chapter or to produce the required business records under subsection (5) within 21 ~~10 business~~ days after receipt of the written request of the department, such failure shall be deemed an immediate serious danger to public health, safety, or welfare sufficient to justify service by the department of a stop-work order on the employer, requiring the cessation of all business operations. If the department makes such a determination, the department shall issue a stop-work order within 72 hours. The order shall take effect when served upon the employer or, for a particular employer worksite, when served at that worksite. In addition to serving a stop-work order at a particular worksite which shall be effective immediately, the department shall immediately proceed with service upon the employer which shall be effective upon all employer worksites in the state for which

the employer is not in compliance. A stop-work order may be served with regard to an employer's worksite by posting a copy of the stop-work order in a conspicuous location at the worksite. Information related to an employer's stop-work order shall be made available on the division's website~~, be updated daily,~~ and remain on the website for at least 5 years. The order shall remain in effect until the department issues an order releasing the stop-work order upon a finding that the employer has come into compliance with the coverage requirements of this chapter and has paid any penalty assessed under this section. The department may issue an order of conditional release from a stop-work order to an employer upon a finding that the employer has complied with the coverage requirements of this chapter, paid a penalty of $1,000 as a down payment, and agreed to remit periodic payments of the remaining penalty amount pursuant to a payment agreement schedule with the department or pay the remaining penalty amount in full. An employer may not enter into a payment agreement schedule unless the employer has fully paid any previous penalty assessed under this section. If an order of conditional release is issued, failure by the employer to pay the penalty in full or enter into a payment agreement with the department within 21 ~~28~~ days after service of the first penalty assessment calculation ~~stop-work order~~ upon the employer, or to meet any term or condition of such penalty payment agreement, shall result in the immediate reinstatement of the stop-work order and the entire unpaid balance of the penalty shall become immediately due.

(d)1. In addition to any penalty, stop-work order, or injunction, the department shall assess against an ~~any~~ employer

who has failed to secure the payment of compensation as required by this chapter a penalty equal to 2 times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation required by this chapter within the preceding 12-month ~~2-year~~ period or $1,000, whichever is greater. However, for an employer who is issued a stop-work order for materially understating or concealing payroll or has been previously issued a stop-work order or an order of penalty assessment, the preceding 24-month period shall be used to calculate the penalty as specified in this subparagraph.

a. For an employer ~~employers~~ who has ~~have~~ not been previously issued a stop-work order or order of penalty assessment, the department must allow the employer to receive a credit for the initial payment of the estimated annual workers' compensation policy premium, as determined by the carrier, to be applied to the penalty. Before applying the credit to the penalty, the employer must provide the department with documentation reflecting that the employer has secured the payment of compensation pursuant to s. 440.38 and proof of payment to the carrier. In order for the department to apply a credit for an employer that has secured workers' compensation for leased employees by entering into an employee leasing contract with a licensed employee leasing company, the employer must provide the department with a written confirmation, by a representative from the employee leasing company, of the dollar or percentage amount attributable to the initial estimated workers' compensation expense for leased employees, and proof of

payment to the employee leasing company. The credit may not be applied unless the employer provides the documentation and proof of payment to the department within 21 ~~28~~ days after the employer's receipt of the written request to produce business records for calculating the penalty under this subparagraph ~~service of the stop-work order or first order of penalty assessment upon the employer~~.

b. For an employer ~~employers~~ who has ~~have~~ not been previously issued a stop-work order or order of penalty assessment, the department must reduce the final assessed penalty by 25 percent if the employer has complied with administrative rules adopted pursuant to subsection (5) and has provided such business records to the department within 21 ~~10 business~~ days after the employer's receipt of the written request to produce business records for calculating the penalty under this subparagraph.

c. For an employer who has not been previously issued a stop-work order or an order of penalty assessment, the department must reduce the final assessed penalty by 15 percent if the employer correctly answers at least 80 percent of the questions from an online workers' compensation coverage and compliance tutorial, developed by the department, within 21 days after the employer's receipt of the written request to produce business records for calculating the penalty under this subparagraph. The online tutorial must be taken in a department office location identified by rule.

The $1,000 penalty shall be assessed against the employer even if the calculated penalty after the credit provided in sub-

subparagraph a., the ~~and~~ 25 percent reduction provided in sub-subparagraph b., and the 15 percent reduction provided in sub-subparagraph c., as applicable, have been applied is less than $1,000.

2. Any subsequent violation within 5 years after the most recent violation shall, in addition to the penalties set forth in this subsection, be deemed a knowing act within the meaning of s. 440.105.

Section 15. Subsection (12) of section 440.13, Florida Statutes, is amended to read:

440.13 Medical services and supplies; penalty for violations; limitations.—

(12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM REIMBURSEMENT ALLOWANCES.—

(a) A three-member panel is created, consisting of the Chief Financial Officer, or the Chief Financial Officer's designee, and two members to be appointed by the Governor, subject to confirmation by the Senate, one member who, on account of present or previous vocation, employment, or affiliation, shall be classified as a representative of employers, the other member who, on account of previous vocation, employment, or affiliation, shall be classified as a representative of employees. The panel shall determine statewide schedules of maximum reimbursement allowances for medically necessary treatment, care, and attendance provided by physicians, hospitals, ambulatory surgical centers, work-hardening programs, pain programs, and durable medical equipment. The maximum reimbursement allowances for inpatient hospital care shall be based on a schedule of per diem rates, to

be approved by the three-member panel no later than March 1, 1994, to be used in conjunction with a precertification manual as determined by the department, including maximum hours in which an outpatient may remain in observation status, which shall not exceed 23 hours. All compensable charges for hospital outpatient care shall be reimbursed at 75 percent of usual and customary charges, except as otherwise provided by this subsection. Annually, the three-member panel shall adopt schedules of maximum reimbursement allowances for physicians, hospital inpatient care, hospital outpatient care, ambulatory surgical centers, work-hardening programs, and pain programs. An individual physician, hospital, ambulatory surgical center, pain program, or work-hardening program shall be reimbursed:

1. ~~either~~ The agreed-upon contract price; or

2. If there is no agreed-upon contract price, the lesser of the provider's billed charge or the maximum reimbursement allowance in the appropriate schedule.

(b) It is the intent of the Legislature to increase the schedule of maximum reimbursement allowances for selected physicians effective January 1, 2004, and to pay for the increases through reductions in payments to hospitals. Revisions developed pursuant to this subsection are limited to the following:

1. Payments for outpatient physical, occupational, and speech therapy provided by hospitals shall be reduced to the schedule of maximum reimbursement allowances for these services which applies to nonhospital providers.

2. Payments for scheduled outpatient nonemergency radiological and clinical laboratory services that are not

provided in conjunction with a surgical procedure shall be reduced to the schedule of maximum reimbursement allowances for these services which applies to nonhospital providers.

3. Outpatient reimbursement for scheduled surgeries shall be reduced from 75 percent of charges to 60 percent of charges.

4. Maximum reimbursement for a physician licensed under chapter 458 or chapter 459 shall be increased to 110 percent of the reimbursement allowed by Medicare, using appropriate codes and modifiers or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is greater.

5. Maximum reimbursement for surgical procedures shall be increased to 140 percent of the reimbursement allowed by Medicare or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is greater.

(c) As to reimbursement for a prescription medication, the reimbursement amount for a prescription shall be the average wholesale price plus $4.18 for the dispensing fee. For repackaged or relabeled prescription medications dispensed by a dispensing practitioner as provided in s. 465.0276, the fee schedule for reimbursement shall be 112.5 percent of the average wholesale price, plus $8.00 for the dispensing fee. For purposes of this subsection, the average wholesale price shall be calculated by multiplying the number of units dispensed times the per-unit average wholesale price set by the original manufacturer of the underlying drug dispensed by the practitioner, based upon the published manufacturer's average wholesale price published in the Medi-Span Master Drug Database as of the date of dispensing. All pharmaceutical claims submitted for repackaged or relabeled prescription medications

must include the National Drug Code of the original manufacturer. Fees for pharmaceuticals and pharmaceutical services shall be reimbursable at the applicable fee schedule amount except where the employer or carrier, or a service company, third party administrator, or any entity acting on behalf of the employer or carrier directly contracts with the provider seeking reimbursement for a lower amount.

(d) Reimbursement for all fees and other charges for such treatment, care, and attendance, including treatment, care, and attendance provided by any hospital or other health care provider, ambulatory surgical center, work-hardening program, or pain program, must not exceed the amounts provided by the uniform schedule of maximum reimbursement allowances as determined by the panel or as otherwise provided in this section. This subsection also applies to independent medical examinations performed by health care providers under this chapter. In determining the uniform schedule, the panel shall first approve the data which it finds representative of prevailing charges in the state for similar treatment, care, and attendance of injured persons. Each health care provider, health care facility, ambulatory surgical center, work-hardening program, or pain program receiving workers' compensation payments shall maintain records verifying their usual charges. In establishing the uniform schedule of maximum reimbursement allowances, the panel must consider:

1. The levels of reimbursement for similar treatment, care, and attendance made by other health care programs or third-party providers;

2. The impact upon cost to employers for providing a level

of reimbursement for treatment, care, and attendance which will ensure the availability of treatment, care, and attendance required by injured workers;

3. The financial impact of the reimbursement allowances upon health care providers and health care facilities, including trauma centers as defined in s. 395.4001, and its effect upon their ability to make available to injured workers such medically necessary remedial treatment, care, and attendance. The uniform schedule of maximum reimbursement allowances must be reasonable, must promote health care cost containment and efficiency with respect to the workers' compensation health care delivery system, and must be sufficient to ensure availability of such medically necessary remedial treatment, care, and attendance to injured workers; and

4. The most recent average maximum allowable rate of increase for hospitals determined by the Health Care Board under chapter 408.

(e) In addition to establishing the uniform schedule of maximum reimbursement allowances, the panel shall:

1. Take testimony, receive records, and collect data to evaluate the adequacy of the workers' compensation fee schedule, nationally recognized fee schedules and alternative methods of reimbursement to health care providers and health care facilities for inpatient and outpatient treatment and care.

2. Survey health care providers and health care facilities to determine the availability and accessibility of workers' compensation health care delivery systems for injured workers.

3. Survey carriers to determine the estimated impact on carrier costs and workers' compensation premium rates by

implementing changes to the carrier reimbursement schedule or implementing alternative reimbursement methods.

4. Submit recommendations on or before January 15, 2017, and biennially thereafter, to the President of the Senate and the Speaker of the House of Representatives on methods to improve the workers' compensation health care delivery system.

The department, as requested, shall provide data to the panel, including, but not limited to, utilization trends in the workers' compensation health care delivery system. The department shall provide the panel with an annual report regarding the resolution of medical reimbursement disputes and any actions pursuant to subsection (8). The department shall provide administrative support and service to the panel to the extent requested by the panel and may adopt rules necessary to administer this subsection. For prescription medication purchased under the requirements of this subsection, a dispensing practitioner shall not possess such medication unless payment has been made by the practitioner, the practitioner's professional practice, or the practitioner's practice management company or employer to the supplying manufacturer, wholesaler, distributor, or drug repackager within 60 days of the dispensing practitioner taking possession of that medication.

Section 16. Subsection (3) of section 440.185, Florida Statutes, is amended to read:

440.185 Notice of injury or death; reports; penalties for violations.—

(3) Within 3 business days after the employer or the employee informs the carrier of an injury, the carrier shall

send by regular mail or e-mail to the injured worker an informational brochure approved by the department which sets forth in clear and understandable language an explanation of the rights, benefits, procedures for obtaining benefits and assistance, criminal penalties, and obligations of injured workers and their employers under the Florida Workers' Compensation Law. Annually, the carrier or its third-party administrator shall send by regular mail or e-mail to the employer an informational brochure approved by the department which sets forth in clear and understandable language an explanation of the rights, benefits, procedures for obtaining benefits and assistance, criminal penalties, and obligations of injured workers and their employers under the Florida Workers' Compensation Law. All such informational brochures shall contain a notice that clearly states in substance the following: "Any person who, knowingly and with intent to injure, defraud, or deceive any employer or employee, insurance company, or self-insured program, files a statement of claim containing any false or misleading information commits a felony of the third degree."

Section 17. Subsection (3) of section 440.381, Florida Statutes, is amended to read:

440.381 Application for coverage; reporting payroll; payroll audit procedures; penalties.—

(3) The Financial Services Commission, in consultation with the department, shall establish by rule minimum requirements for audits of payroll and classifications ~~in order~~ to ensure that the appropriate premium is charged for workers' compensation coverage. The rules must ~~shall~~ ensure that audits performed by both carriers and employers are adequate to provide that all

sources of payments to employees, subcontractors, and independent contractors are ~~have been~~ reviewed and that the accuracy of classification of employees is ~~has been~~ verified. The rules must require ~~shall provide~~ that employers in all classes other than the construction class be audited at least ~~not less frequently than~~ biennially and may provide for more frequent audits of employers in specified classifications based on factors such as amount of premium, type of business, loss ratios, or other relevant factors. ~~In no event shall~~ Employers in the construction class~~,~~ generating more than the amount of premium required to be experience rated must~~,~~ be audited at least ~~less than~~ annually. The annual audits required for construction classes must ~~shall~~ consist of physical onsite audits for policies only if the estimated annual premium is $10,000 or more. Payroll verification audit rules must include, but need not be limited to, the use of state and federal reports of employee income, payroll and other accounting records, certificates of insurance maintained by subcontractors, and duties of employees. At the completion of an audit, the employer or officer of the corporation and the auditor must print and sign their names on the audit document and attach proof of identification to the audit document.

Section 18. Subsection (2) of section 497.277, Florida Statutes, is amended to read:

497.277 Other charges.—Other than the fees for the sale of burial rights, burial merchandise, and burial services, no other fee may be directly or indirectly charged, contracted for, or received by a cemetery company as a condition for a customer to use any burial right, burial merchandise, or burial service,

except for:

(2) Charges paid for transferring burial rights from one purchaser to another~~; however, no such fee may exceed $50~~.

Section 19. Paragraph (b) of subsection (1) of section 497.369, Florida Statutes, is amended to read:

497.369 Embalmers; licensure as an embalmer by endorsement; licensure of a temporary embalmer.—

(1) The licensing authority shall issue a license by endorsement to practice embalming to an applicant who has remitted an examination fee set by rule of the licensing authority not to exceed $200 and who the licensing authority certifies:

(b)1. Holds a valid license in good standing to practice embalming in another state of the United States and has engaged in the full-time, licensed practice of embalming in that state for at least 5 years~~, provided that, when the applicant secured her or his original license, the requirements for licensure were substantially equivalent to or more stringent than those existing in this state~~; or

2. Meets the qualifications for licensure in s. 497.368, except that the internship requirement shall be deemed to have been satisfied by 1 year's practice as a licensed embalmer in another state, and has, within 10 years before ~~prior to~~ the date of application, successfully completed a state, regional, or national examination in mortuary science, which, as determined by rule of the licensing authority, is substantially equivalent to or more stringent than the examination given by the licensing authority.

Section 20. Paragraphs (b) and (f) of subsection (1) of

section 497.372, Florida Statutes, are amended to read:

497.372 Funeral directing; conduct constituting practice of funeral directing.—

(1) The practice of funeral directing shall be construed to consist of the following functions, which may be performed only by a licensed funeral director:

(b) Planning or arranging, on an at-need basis, the details of funeral services, embalming, cremation, or other services relating to the final disposition of human remains, and ~~including the removal of such remains from the state; setting the time of the services;~~ establishing the type of services to be rendered~~; acquiring the services of the clergy; and obtaining vital information for the filing of death certificates and obtaining of burial transit permits~~.

(f) Directing, being in charge or apparent charge of, or supervising, directly or indirectly, any memorial service ~~held prior to or within 72 hours of the burial or cremation,~~ if such memorial service is sold or arranged by a licensee.

Section 21. Paragraph (b) of subsection (1) of section 497.374, Florida Statutes, is amended to read:

497.374 Funeral directing; licensure as a funeral director by endorsement; licensure of a temporary funeral director.—

(1) The licensing authority shall issue a license by endorsement to practice funeral directing to an applicant who has remitted a fee set by rule of the licensing authority not to exceed $200 and who:

(b)1. Holds a valid license in good standing to practice funeral directing in another state of the United States and has engaged in the full-time, licensed practice of funeral directing

in that state for at least 5 years~~, provided that, when the applicant secured her or his original license, the requirements for licensure were substantially equivalent to or more stringent than those existing in this state~~; or

2. Meets the qualifications for licensure in s. 497.373, except that the applicant need not hold an associate degree or higher if the applicant holds a diploma or certificate from an accredited program of mortuary science, and has successfully completed a state, regional, or national examination in mortuary science or funeral service arts, which, as determined by rule of the licensing authority, is substantially equivalent to or more stringent than the examination given by the licensing authority.

Section 22. Present subsection (6) of section 554.108, Florida Statutes, is redesignated as subsection (7), a new subsection (6) is added to that section, and subsection (1) of that section is amended, to read:

554.108 Inspection.—

(1) The inspection requirements of this chapter apply only to boilers located in public assembly locations. A ~~potable hot water supply~~ boiler with an ~~a heat~~ input of 200,000 British thermal units (Btu) per hour and above, up to an ~~a heat~~ input not exceeding 400,000 Btu per hour, is exempt from inspection; however, such an exempt boiler, if manufactured after July 1, 2022, ~~but~~ must be stamped with the A.S.M.E. code symbol. Additionally, ~~"HLW" and~~ the ~~boiler's~~ A.S.M.E data report of a boiler with an input of 200,000 to 400,000 Btu per hour must be filed as required under s. 554.103(2).

(6) Each enclosed space or room containing a boiler regulated under this chapter which is fired by the direct

application of energy from the combustion of fuels and which is located in any portion of a public lodging establishment under s. 509.242 shall be equipped with one or more carbon monoxide detector devices.

Section 23. Paragraphs (a) and (e) of subsection (1) and paragraph (a) of subsection (2) of section 554.111, Florida Statutes, are amended to read:

554.111 Fees.—

(1) The department shall charge the following fees:

(a) For an applicant for a certificate of competency, the initial application fee shall be $50, and the annual renewal fee shall be $30. ~~The fee for examination shall be $50.~~

(e) An application for a boiler permit must include the manufacturer's data report ~~applicable certificate inspection fee provided in paragraph (b)~~.

(2) Not more than an amount equal to one certificate inspection fee may be charged or collected for any and all boiler inspections in any inspection period, except as otherwise provided in this chapter.

(a) When it is necessary to make a special trip for testing and verification inspections ~~to observe the application of a hydrostatic test~~, an additional fee equal to the fee for a certificate inspection of the boiler must be charged.

Section 24. Subsection (4) of section 554.114, Florida Statutes, is amended to read:

554.114 Prohibitions; penalties.—

(4) A boiler insurance company, authorized inspection agency, or other person in violation of this section for more than 30 days shall pay a fine of $10 per day for the subsequent

~~first~~ 10 days of noncompliance, $50 per day for the subsequent 20 days of noncompliance, and $100 per day for each subsequent day ~~over 20 days~~ of noncompliance thereafter.

Section 25. Subsection (9) of section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(9) Upon receiving service of legal process issued in any civil action or proceeding in this state against any regulated person or any unauthorized insurer under s. 626.906 or s. 626.937 that ~~which~~ is required to appoint the Chief Financial Officer as its agent ~~attorney~~ to receive service of all legal process, the Chief Financial Officer shall make the process available through a secure online portal~~, as attorney, may, in lieu of sending the process by registered or certified mail, send the process or make it available by any other verifiable means, including, but not limited to, making the documents available by electronic transmission from a secure website~~ established by the department to the person last designated by the regulated person or the unauthorized insurer to receive the process. When process documents are made available electronically, the Chief Financial Officer shall promptly send a notice of receipt of service of process to the person last designated by the regulated person or unauthorized insurer to receive legal process. The notice must state the date ~~and manner in which the copy of~~ the process was made available to the regulated person or unauthorized insurer being served and contain the uniform resource locator (URL) where ~~for a hyperlink to access files and information on the department's website to obtain a copy of~~ the process may be obtained.

Section 26. Section 624.422, Florida Statutes, is amended to read:

624.422 Service of process; appointment of Chief Financial Officer as process agent.—

(1) Each licensed insurer, whether domestic, foreign, or alien, shall be deemed to have appointed the Chief Financial Officer and her or his successors in office as its agent ~~attorney~~ to receive service of all legal process issued against it in any civil action or proceeding in this state; and process so served shall be valid and binding upon the insurer.

(2) Before ~~Prior to~~ its authorization to transact insurance in this state, each insurer shall file with the department designation of the name and e-mail address of the person to whom process against it served upon the Chief Financial Officer is to be made available through the department's secure online portal ~~forwarded~~. Each insurer shall also file with the department designation of the name and e-mail address of the person to whom the department shall forward civil remedy notices filed under s. 624.155. The insurer may change a designation at any time by a new filing.

(3) Service of process submitted through the department's secure online portal upon the Chief Financial Officer as the insurer's agent ~~attorney~~ pursuant to such an appointment shall be the sole method of service of process upon an authorized domestic, foreign, or alien insurer in this state.

Section 27. Subsection (1) of section 624.423, Florida Statutes, is amended to read:

624.423 Serving process.—

(1) Service of process upon the Chief Financial Officer as

process agent of the insurer under s. 624.422 and s. 626.937 shall be made ~~by serving a copy of the process upon the Chief Financial Officer or upon her or his assistant, deputy, or other person in charge of her or his office. Service may also be made by mail or~~ electronically as provided in s. 48.151(3) ~~s. 48.151~~. Upon receiving such service, the Chief Financial Officer shall retain a record of the process ~~copy~~ and promptly notify and make ~~forward one copy of~~ the process available through the department's secure online portal ~~by registered or certified mail or by other verifiable means~~, as provided under s. 624.307(9), to the person last designated by the insurer to receive the same, as provided under s. 624.422(2). For purposes of this section, records shall ~~may~~ be retained electronically ~~as paper or electronic copies~~.

Section 28. Paragraph (f) of subsection (3) and paragraph (d) of subsection (4) of section 624.610, Florida Statutes, are amended to read:

624.610 Reinsurance.—

(3)

(f) If the assuming insurer is not authorized or accredited to transact insurance or reinsurance in this state pursuant to paragraph (a) or paragraph (b), the credit permitted by paragraph (c) or paragraph (d) must not be allowed unless the assuming insurer agrees in the reinsurance agreements:

1.a. That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United

States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

b. To designate the Chief Financial Officer, pursuant to s. 48.151(3) ~~s. 48.151~~, as its true and lawful agent ~~attorney~~ upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

2. This paragraph is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

(4) Credit must be allowed when the reinsurance is ceded to an assuming insurer meeting the requirements of this subsection.

(d) The assuming insurer must, in a form specified by the commission:

1. Agree to provide prompt written notice and explanation to the office if the assuming insurer falls below the minimum requirements set forth in paragraph (b) or paragraph (c), or if any regulatory action is taken against it for serious noncompliance with applicable law of any jurisdiction.

2. Consent in writing to the jurisdiction of the courts of this state and to the designation of the Chief Financial Officer, pursuant to s. 48.151(3) ~~s. 48.151~~, as its true and lawful agent ~~attorney~~ upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer. This subparagraph does not limit or alter in any way the capacity of parties to a reinsurance agreement to agree to an alternative dispute resolution mechanism, except to the extent that such agreement is unenforceable under applicable

insolvency or delinquency laws.

3. Consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor which have been declared enforceable in the jurisdiction where the judgment was obtained.

4. Confirm in writing that it will include in each reinsurance agreement a provision requiring the assuming insurer to provide security in an amount equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement, if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or enforcement of a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate.

5. Confirm in writing that it is not presently participating in any solvent scheme of arrangement which involves this state's ceding insurers, and agree to notify the ceding insurer and the office and to provide security in an amount equal to 100 percent of the assuming insurer's liabilities to the ceding insurer if the assuming insurer enters into such a solvent scheme of arrangement. Such security must be consistent with subsection (5) or as specified by commission rule.

Section 29. Present subsections (12) through (21) of section 626.015, Florida Statutes, are redesignated as subsections (13) through (22), respectively, a new subsection (12) is added to that section, and present subsection (20) of that section is amended, to read:


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626.015 Definitions.—As used in this part:

(12) "Licensing authority" means the respective jurisdiction of the department or the office, as provided by law.

(21) ~~(20)~~ "Unaffiliated insurance agent" means a licensed insurance agent, except a limited lines agent, who is self-appointed and who practices as an independent consultant in the business of analyzing or abstracting insurance policies, providing insurance advice or counseling, or making specific recommendations or comparisons of insurance products for a fee established in advance by written contract signed by the parties. An unaffiliated insurance agent may not be affiliated with an insurer, insurer-appointed insurance agent, or insurance agency contracted with or employing insurer-appointed insurance agents. A licensed adjuster who is also an unaffiliated insurance agent may obtain an adjuster appointment in order to adjust claims while holding an unaffiliated appointment on the agent license.

Section 30. Subsection (4) of section 626.171, Florida Statutes, is amended to read:

626.171 Application for license as an agent, customer representative, adjuster, service representative, or reinsurance intermediary.—

(4) An applicant for a license issued by the department under this chapter ~~as an agent, customer representative, adjuster, service representative, or reinsurance intermediary~~ must submit a set of the individual applicant's fingerprints, or, if the applicant is not an individual, a set of the fingerprints of the sole proprietor, majority owner, partners,


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officers, and directors, to the department and must pay the fingerprint processing fee set forth in s. 624.501. Fingerprints must be processed in accordance with s. 624.34 and used to investigate the applicant's qualifications pursuant to s. 626.201. The fingerprints must be taken by a law enforcement agency, designated examination center, or other department-approved entity. The department shall require all designated examination centers to have fingerprinting equipment and to take fingerprints from any applicant or prospective applicant who pays the applicable fee. The department may not approve an application for licensure as an agent, customer service representative, adjuster, service representative, or reinsurance intermediary if fingerprints have not been submitted.

Section 31. Paragraph (f) of subsection (2) of section 626.172, Florida Statutes, is amended to read:

626.172 Application for insurance agency license.—

(2) An application for an insurance agency license must be signed by an individual required to be listed in the application under paragraph (a). An insurance agency may permit a third party to complete, submit, and sign an application on the insurance agency's behalf; however, the insurance agency is responsible for ensuring that the information on the application is true and correct and is accountable for any misstatements or misrepresentations. The application for an insurance agency license must include:

(f) The fingerprints submitted in accordance with s. 626.171(4) of each of the following:

1. A sole proprietor;

2. Each individual required to be listed in the application

under paragraph (a); and

3. Each individual who directs or participates in the management or control of an incorporated agency whose shares are not traded on a securities exchange.

~~Fingerprints must be taken by a law enforcement agency or other entity approved by the department and must be accompanied by the fingerprint processing fee specified in s. 624.501. Fingerprints must be processed in accordance with s. 624.34. However,~~ Fingerprints need not be filed for an individual who is currently licensed and appointed under this chapter. This paragraph does not apply to corporations whose voting shares are traded on a securities exchange.

Section 32. Section 626.173, Florida Statutes, is created to read:

626.173 Insurance agency closure; cancellation of licenses.—

(1) If a licensed insurance agency permanently ceases the transaction of insurance or ceases the transaction of insurance for more than 30 days, the agent in charge, the director of the agency, or other officer listed on the original application for licensure must, within 35 days after the agency first ceases the transaction of insurance, do all of the following:

(a) Cancel the insurance agency's license by completing and submitting a form prescribed by the department to notify the department of the cancellation of the license.

(b) Notify all insurers by which the agency or agent in charge is appointed of the agency's cessation of operations, the date on which operations ceased, the identity of any agency or

agent to which the agency's current book of business has been transferred, and the method by which agency records may be obtained during the time periods specified in ss. 626.561 and 626.748.

(c) Notify all policyholders currently insured by a policy written, produced, or serviced by the agency of the agency's cessation of operations; the date on which operations ceased; and the identity of the agency or agent to which the agency's current book of business has been transferred or, if no transfer has occurred, a statement directing the policyholder to contact the insurance company for assistance in locating a licensed agent to service the policy.

(d) Notify all premium finance companies through which active policies are financed of the agency's cessation of operations, the date on which operations ceased, and the identity of the agency or agent to which the agency's current book of business has been transferred.

(e) Ensure that all funds held in a fiduciary capacity are properly distributed to the rightful owners.

(2)(a) The department may, in a proceeding initiated pursuant to chapter 120, impose an administrative fine against the agent in charge or director or officer of the agency found in the proceeding to have violated any provision of this section. A proceeding may not be initiated and a fine may not accrue until after the person has been notified in writing of the nature of the violation, has been afforded 10 business days to correct the violation, and has failed to do so.

(b) A fine imposed under this subsection may not exceed the amounts specified in s. 626.681 per violation.

(c) The department may, in addition to the imposition of an administrative fine under this subsection, suspend or revoke the license of a licensee fined under this subsection.

(d) In imposing any administrative penalty or remedy provided under this subsection, the department shall take into account the appropriateness of the penalty with respect to the size of the financial resources and the good faith of the person charged, the gravity of the violation, the history of previous violations, and other matters as justice may require.

Section 33. Subsection (3) of section 626.201, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

626.201 Investigation.—

(3) An inquiry or investigation of the applicant's qualifications, character, experience, background, and fitness must include submission of the applicant's fingerprints, in accordance with s. 626.171(4), to the Department of Law Enforcement and the Federal Bureau of Investigation and consideration of any state criminal records, federal criminal records, or local criminal records obtained from these agencies or from local law enforcement agencies.

(4) The expiration, nonrenewal, or surrender of a license under this chapter does not eliminate jurisdiction of the licensing authority to investigate and prosecute for a violation committed by the licensee while licensed under this chapter. The prosecution of any matter may be initiated or continued notwithstanding the withdrawal of a complaint.

Section 34. Section 626.202, Florida Statutes, is amended to read:

626.202 Fingerprinting requirements.—

(1) The requirements for completion and submission of fingerprints under this chapter in accordance with s. 626.171(4) are deemed to be met when an individual currently licensed under this chapter seeks additional licensure and has previously submitted fingerprints to the department within the past 48 months. However, the department may require the individual to file fingerprints if it has reason to believe that an applicant or licensee has been found guilty of, or pleaded guilty or nolo contendere to, a felony or a crime related to the business of insurance in this state or any other state or jurisdiction.

(2) If there is a change in ownership or control of any entity licensed under this chapter, or if a new partner, officer, or director is employed or appointed, a set of fingerprints of the new owner, partner, officer, or director must be filed with the department or office within 30 days after the change. The acquisition of 10 percent or more of the voting securities of a licensed entity is considered a change of ownership or control. The fingerprints must be submitted in accordance with s. 626.171(4) ~~taken by a law enforcement agency or other department-approved entity and be accompanied by the fingerprint processing fee in s. 624.501~~.

Section 35. Paragraph (j) of subsection (2) of section 626.221, Florida Statutes, is amended to read:

626.221 Examination requirement; exemptions.—

(2) However, an examination is not necessary for any of the following:

(j) An applicant for license as an all-lines adjuster who has the designation of Accredited Claims Adjuster (ACA) from a

regionally accredited postsecondary institution in this state, Certified All Lines Adjuster (CALA) from Kaplan Financial Education, Associate in Claims (AIC) from the Insurance Institute of America, Professional Claims Adjuster (PCA) from the Professional Career Institute, Professional Property Insurance Adjuster (PPIA) from the HurriClaim Training Academy, Certified Adjuster (CA) from ALL LINES Training, Certified Claims Adjuster (CCA) from AE21 Incorporated, Claims Adjuster Certified Professional (CACP) from WebCE, Inc., Accredited Insurance Claims Specialist (AICS) from Encore Claim Services, or Universal Claims Certification (UCC) from Claims and Litigation Management Alliance (CLM) whose curriculum has been approved by the department and which includes comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard department testing for the all-lines adjuster license. The department shall adopt rules establishing standards for the approval of curriculum.

Section 36. Subsection (6) of section 626.311, Florida Statutes, is amended to read:

626.311 Scope of license.—

(6) An agent who appoints his or her license as an unaffiliated insurance agent may not hold an appointment from an insurer for any license he or she holds, with the exception of an adjuster license; transact, solicit, or service an insurance contract on behalf of an insurer; interfere with commissions received or to be received by an insurer-appointed insurance agent or an insurance agency contracted with or employing insurer-appointed insurance agents; or receive compensation or any other thing of value from an insurer, an insurer-appointed

insurance agent, or an insurance agency contracted with or employing insurer-appointed insurance agents for any transaction or referral occurring after the date of appointment as an unaffiliated insurance agent. An unaffiliated insurance agent may continue to receive commissions on sales that occurred before the date of appointment as an unaffiliated insurance agent if the receipt of such commissions is disclosed when making recommendations or evaluating products for a client that involve products of the entity from which the commissions are received. An adjuster who holds an adjuster license and who is also an unaffiliated insurance agent may obtain an adjuster appointment while maintaining his or her unaffiliated insurance agent appointment and may adjust claims and receive compensation in accordance with the authority granted by the adjuster license and appointment.

Section 37. Paragraph (h) of subsection (1) of section 626.321, Florida Statutes, is amended to read:

626.321 Limited licenses and registration.—

(1) The department shall issue to a qualified applicant a license as agent authorized to transact a limited class of business in any of the following categories of limited lines insurance:

(h) *Portable electronics insurance.*—License for property insurance or inland marine insurance that covers only loss, theft, mechanical failure, malfunction, or damage for portable electronics.

1. The license may be issued only to:

a. Employees or authorized representatives of a licensed general lines agent; or

b. The lead business location of a retail vendor that sells portable electronics insurance. The lead business location must have a contractual relationship with a general lines agent.

2. Employees or authorized representatives of a licensee under subparagraph 1. may sell or offer for sale portable electronics coverage without being subject to licensure as an insurance agent if:

a. Such insurance is sold or offered for sale at a licensed location or at one of the licensee's branch locations if the branch location is appointed by the licensed lead business location or its appointing insurers;

b. The insurer issuing the insurance directly supervises or appoints a general lines agent to supervise the sale of such insurance, including the development of a training program for the employees and authorized representatives of vendors that are directly engaged in the activity of selling or offering the insurance; and

c. At each location where the insurance is offered, brochures or other written materials that provide the information required by this subparagraph are made available to all prospective customers. The brochures or written materials may include information regarding portable electronics insurance, service warranty agreements, or other incidental services or benefits offered by a licensee.

3. Individuals not licensed to sell portable electronics insurance may not be paid commissions based on the sale of such coverage. However, a licensee who uses a compensation plan for employees and authorized representatives which includes supplemental compensation for the sale of noninsurance products,

in addition to a regular salary or hourly wages, may include incidental compensation for the sale of portable electronics insurance as a component of the overall compensation plan.

4. Brochures or other written materials related to portable electronics insurance must:

a. Disclose that such insurance may duplicate coverage already provided by a customer's homeowners insurance policy, renters insurance policy, or other source of coverage;

b. State that enrollment in insurance coverage is not required in order to purchase or lease portable electronics or services;

c. Summarize the material terms of the insurance coverage, including the identity of the insurer, the identity of the supervising entity, the amount of any applicable deductible and how it is to be paid, the benefits of coverage, and key terms and conditions of coverage, such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or nonoriginal manufacturer parts or equipment;

d. Summarize the process for filing a claim, including a description of how to return portable electronics and the maximum fee applicable if the customer fails to comply with equipment return requirements; and

e. State that an enrolled customer may cancel coverage at any time and that the person paying the premium will receive a refund of any unearned premium.

5. A licensed and appointed general lines agent is not required to obtain a portable electronics insurance license to offer or sell portable electronics insurance at locations already licensed as an insurance agency, but may apply for a

portable electronics insurance license for branch locations not otherwise licensed to sell insurance.

6. A portable electronics license authorizes the sale of individual policies or certificates under a group or master insurance policy. The license also authorizes the sale of service warranty agreements covering only portable electronics to the same extent as if licensed under s. 634.419 or s. 634.420.

7. A licensee may bill and collect the premium for the purchase of portable electronics insurance provided that:

a. If the insurance is included with the purchase or lease of portable electronics or related services, the licensee clearly and conspicuously discloses that insurance coverage is included with the purchase. Disclosure of the stand-alone cost of the premium for same or similar insurance must be made on the customer's bill and in any marketing materials made available at the point of sale. If the insurance is not included, the charge to the customer for the insurance must be separately itemized on the customer's bill.

b. Premiums are incidental to other fees collected, are maintained in a manner that is readily identifiable, and are accounted for and remitted to the insurer or supervising entity within 60 days of receipt. Licensees are not required to maintain such funds in a segregated account.

c. All funds received by a licensee from an enrolled customer for the sale of the insurance are considered funds held in trust by the licensee in a fiduciary capacity for the benefit of the insurer. Licensees may receive compensation for billing and collection services.

8. Notwithstanding any other provision of law, the terms for the termination or modification of coverage under a policy of portable electronics insurance are those set forth in the policy.

9. Notice or correspondence required by the policy, or otherwise required by law, may be provided by electronic means if the insurer or licensee maintains proof that the notice or correspondence was sent. Such notice or correspondence may be sent on behalf of the insurer or licensee by the general lines agent appointed by the insurer to supervise the administration of the program. For purposes of this subparagraph, an enrolled customer's provision of an electronic mail address to the insurer or licensee is deemed to be consent to receive notices and correspondence by electronic means if a conspicuously located disclosure is provided to the customer indicating the same.

10. The ~~provisions of this chapter requiring submission of~~ fingerprints requirements in s. 626.171(4) do not apply to licenses issued to qualified entities under this paragraph.

11. A branch location that sells portable electronics insurance may, in lieu of obtaining an appointment from an insurer or warranty association, obtain a single appointment from the associated lead business location licensee and pay the prescribed appointment fee under s. 624.501 if the lead business location has a single appointment from each insurer or warranty association represented and such appointment applies to the lead business location and all of its branch locations. Branch location appointments shall be renewed 24 months after the initial appointment date of the lead business location and every

24 months thereafter. Notwithstanding s. 624.501, the renewal fee applicable to such branch location appointments is $30 per appointment.

12. For purposes of this paragraph:

a. "Branch location" means any physical location in this state at which a licensee offers its products or services for sale.

b. "Portable electronics" means personal, self-contained, easily carried by an individual, battery-operated electronic communication, viewing, listening, recording, gaming, computing or global positioning devices, including cell or satellite phones, pagers, personal global positioning satellite units, portable computers, portable audio listening, video viewing or recording devices, digital cameras, video camcorders, portable gaming systems, docking stations, automatic answering devices, and other similar devices and their accessories, and service related to the use of such devices.

c. "Portable electronics transaction" means the sale or lease of portable electronics or a related service, including portable electronics insurance.

Section 38. Subsection (5) of section 626.601, Florida Statutes, is amended to read:

626.601 Improper conduct; inquiry; fingerprinting.—

(5) If the department or office, after investigation, has reason to believe that an individual may have been found guilty of or pleaded guilty or nolo contendere to a felony or a crime related to the business of insurance in this or any other state or jurisdiction, the department or office may require the individual to file with the department or office a complete set

of his or her fingerprints, in accordance with s. 626.171(4), which shall be accompanied by the fingerprint processing fee set forth in s. 624.501. The fingerprints shall be taken by an authorized law enforcement agency or other department-approved entity.

Section 39. Subsection (2) of section 626.7845, Florida Statutes, is amended to read:

626.7845 Prohibition against unlicensed transaction of life insurance.—

(2) Except as provided in s. 626.112(6), with respect to any line of authority specified in s. 626.015(13) ~~s. 626.015(12)~~, an individual may not, unless licensed as a life agent:

(a) Solicit insurance or annuities or procure applications;

(b) In this state, engage or hold himself or herself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving opinions to persons relative to insurance or insurance contracts, unless the individual is:

1. A consulting actuary advising insurers;

2. An employee of a labor union, association, employer, or other business entity, or the subsidiaries and affiliates of each, who counsels and advises such entity or entities relative to their interests and those of their members or employees under insurance benefit plans; or

3. A trustee advising a settlor, a beneficiary, or a person regarding his or her interests in a trust, relative to insurance benefit plans; or

(c) In this state, from this state, or with a resident of

this state, offer or attempt to negotiate on behalf of another person a viatical settlement contract as defined in s. 626.9911.

Section 40. Paragraph (d) of subsection (2) of section 626.8411, Florida Statutes, is amended, and paragraph (f) is added to subsection (1) of that section, to read:

626.8411 Application of Florida Insurance Code provisions to title insurance agents or agencies.—

(1) The following provisions applicable to general lines agents or agencies also apply to title insurance agents or agencies:

(f) Section 626.172(2)(f), relating to fingerprints.

(2) The following provisions of part I do not apply to title insurance agents or title insurance agencies:

(d) Section 626.172, except for paragraph (2)(f) of that section, relating to agent in full-time charge.

Section 41. Paragraph (b) of subsection (1) of section 626.8412, Florida Statutes, is amended to read:

626.8412 License and appointments required.—

(1) Except as otherwise provided in this part:

(b) A title insurance agent may not sell a title insurance policy issued by an insurer for which the agent and the agency do ~~does~~ not hold a current appointment.

Section 42. Paragraph (a) of subsection (3) of section 626.8417, Florida Statutes, is amended to read:

626.8417 Title insurance agent licensure; exemptions.—

(3) The department may not grant or issue a license as a title insurance agent to an individual who is found by the department to be untrustworthy or incompetent, who does not meet the qualifications for examination specified in s. 626.8414, or

who does not meet the following qualifications:

(a) Within the 4 years immediately preceding the date of the application for license, the applicant must have completed a 40-hour ~~classroom~~ course in title insurance, 3 hours of which are on the subject matter of ethics, as approved by the department, or must have had at least 12 months of experience in responsible title insurance duties, under the supervision of a licensed title insurance agent, title insurer, or attorney while working in the title insurance business as a substantially full-time, bona fide employee of a title insurance agency, title insurance agent, title insurer, or attorney who conducts real estate closing transactions and issues title insurance policies but who is exempt from licensure under subsection (4). If an applicant's qualifications are based upon the periods of employment at responsible title insurance duties, the applicant must submit, with the license application, an affidavit of the applicant and of the employer affirming the period of such employment, that the employment was substantially full time, and giving a brief abstract of the nature of the duties performed by the applicant.

Section 43. Section 626.8421, Florida Statutes, is amended to read:

626.8421 Number of appointments permitted or required.—A title agent and a title agency shall be required to have a separate appointment as to each insurer by which they are ~~he or she is~~ appointed as agents ~~agent~~. As a part of each appointment there shall be a certified statement or affidavit of an appropriate officer or official of the appointing insurer stating that to the best of the insurer's knowledge and belief

the applicant, or its principals in the case of a corporation or other legal entity, has met the requirements of s. 626.8417.

Section 44. Subsections (1) and (2) of section 626.843, Florida Statutes, are amended to read:

626.843 Renewal, continuation, reinstatement, termination of title insurance agent's and title insurance agency's appointments ~~appointment~~.—

(1) Appointments ~~the appointment~~ of a title insurance agent and a title insurance agency shall continue in force until suspended, revoked, or otherwise terminated, but subject to a renewed request filed by the insurer every 24 months after the original issue dates ~~date~~ of the appointments ~~appointment~~, accompanied by payments ~~payment~~ of the renewal appointment fees ~~fee~~ and taxes as prescribed in s. 624.501.

(2) Title insurance agent and title insurance agency appointments shall be renewed pursuant to s. 626.381 for insurance representatives in general.

Section 45. Subsection (1) of section 626.8433, Florida Statutes, is amended to read:

626.8433 Filing of reasons for terminating appointment of title insurance agent and title insurance agency; confidential information.—

(1) Any title insurer that is terminating the appointment of a title insurance agent or title insurance agency, whether such termination is by direct action of the appointing title insurer or by failure to renew or continue the appointment as provided, shall file with the department a statement of the reasons, if any, for, and the facts relative to, such termination.

Section 46. Section 626.8447, Florida Statutes, is amended to read:

626.8447 Effect of suspension or revocation upon other licensees, appointees.—In case of the suspension or revocation of the license and appointment of any title insurance agent or title insurance agency, the licenses and appointments of all other title insurance agents who knowingly were parties to the act that ~~which~~ formed the ground for such suspension or revocation may likewise be suspended or revoked for the same period as that of the offending title insurance agent or title insurance agency, but such suspension or revocation does ~~shall~~ not prevent any title insurance agent, except the one whose license and appointment was first suspended or revoked, from being issued an appointment for some other title insurer.

Section 47. Subsection (10) of section 626.854, Florida Statutes, is amended to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(10)(a) If a public adjuster enters into a contract with an insured or claimant to reopen a claim or file a supplemental claim that seeks additional payments for a claim that has been previously paid in part or in full or settled by the insurer, the public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value based on a previous settlement or previous claim payments by the insurer for the same cause of loss. The charge, compensation, payment, commission, fee, or any other thing of

value must be based only on the recovery allocated to the insured for covered damages, exclusive of attorney fees and costs, ~~claim payments or settlement~~ obtained through the work of the public adjuster after entering into the contract with the insured or claimant. Compensation for the reopened or supplemental claim may not exceed 20 percent of the reopened or supplemental claim payment. In no event shall the contracts described in this paragraph exceed the limitations in paragraph (b).

(b) A public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value in excess of:

1. Ten percent of the amount of insurance recovery allocated to the insured for covered damages, exclusive of attorney fees and costs, ~~claim payments made~~ by the insurer for claims based on events that are the subject of a declaration of a state of emergency by the Governor. This provision applies to claims made during the year after the declaration of emergency. After that year, the limitations in subparagraph 2. apply.

2. Twenty percent of the amount of insurance recovery allocated to the insured for covered damages, exclusive of attorney fees and costs, ~~claim payments made~~ by the insurer for claims that are not based on events that are the subject of a declaration of a state of emergency by the Governor.

(c) Insurance claim payments made by the insurer do not include policy deductibles, and public adjuster compensation may not be based on the deductible portion of a claim.

(d) Public adjuster compensation may not be based on amounts attributable to additional living expenses unless such

compensation is affirmatively agreed to in a separate agreement that includes a disclosure in substantially the following form: "I agree to retain and compensate the public adjuster for adjusting my additional living expenses and securing payment from my insurer for amounts attributable to additional living expenses payable under the policy issued on my (home/mobile home/condominium unit)."

(e) Public adjuster compensation may not be increased based on a claim being resolved by litigation.

(f) Any maneuver, shift, or device through which the limits on compensation set forth in this subsection are exceeded is a violation of this chapter punishable as provided under s. 626.8698.

Section 48. Section 626.8561, Florida Statutes, is amended to read:

626.8561 "Public adjuster apprentice" defined.—The term "public adjuster apprentice" means a person licensed as an all-lines adjuster who:

(1) Is appointed and employed or contracted by ~~a public adjuster or~~ a public adjusting firm;

(2) Assists the ~~public adjuster or~~ public adjusting firm in ascertaining and determining the amount of any claim, loss, or damage payable under an insurance contract, or who undertakes to effect settlement of such claim, loss, or damage; and

(3) Satisfies the requirements of s. 626.8651.

Section 49. Paragraph (e) of subsection (1) and subsection (2) of section 626.865, Florida Statutes, are amended to read:

626.865 Public adjuster's qualifications, bond.—

(1) The department shall issue a license to an applicant


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for a public adjuster's license upon determining that the applicant has paid the applicable fees specified in s. 624.501 and possesses the following qualifications:

(e) Has been licensed and appointed in this state as a nonresident public adjuster on a continual basis for the previous 6 months, or has been licensed as an all-lines adjuster, and has been appointed on a continual basis for the previous 6 months as a public adjuster apprentice under s. 626.8561, as an independent adjuster under s. 626.855, or as a company employee adjuster under s. 626.856.

(2) At the time of application for license as a public adjuster, the applicant shall file with the department a bond executed and issued by a surety insurer authorized to transact such business in this state, in the amount of $50,000, conditioned for the faithful performance of his or her duties as a public adjuster under the license for which the applicant has applied, and thereafter maintain the bond unimpaired throughout the existence of the license ~~and for at least 1 year after termination of the license~~.

(a) The bond must ~~shall~~ be in favor of the department and must ~~shall~~ specifically authorize recovery by the department of the damages sustained in case the licensee is guilty of fraud or unfair practices in connection with his or her business as public adjuster.

(b) The bond must remain in effect for 1 year after the expiration or termination of the license.

(c) The aggregate liability of the surety for all such damages may not ~~shall in no event~~ exceed the amount of the bond. The ~~Such~~ bond may ~~shall~~ not be terminated unless at least 30


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days' written notice is given to the licensee and filed with the department.

Section 50. Paragraph (a) of subsection (1) and subsection (3) of section 626.8651, Florida Statutes, are amended to read:

626.8651 Public adjuster apprentice appointment; qualifications.—

(1)(a) The department shall issue an appointment as a public adjuster apprentice to a licensee who:

1. Is licensed as an all-lines adjuster under s. 626.866;

2. Has filed with the department a bond executed and issued by a surety insurer that is authorized to transact such business in this state in the amount of $50,000, which is conditioned upon the faithful performance of his or her duties as a public adjuster apprentice; and

3. Maintains such bond unimpaired throughout the existence of the appointment. The bond must remain in effect for 1 year after the expiration or termination of the license ~~and for at least 1 year after termination of the appointment~~.

(3) A public adjuster apprentice has the same authority as the licensed public adjuster or public adjusting firm that employs the apprentice except that an apprentice may not execute contracts for the services of a public adjuster or public adjusting firm. An individual may not be, act as, or hold himself or herself out to be a public adjuster apprentice unless the individual is licensed as an all-lines adjuster and holds a current appointment by a licensed ~~public all-lines adjuster or a~~ public adjusting firm that has designated with the department a primary ~~employs a licensed public~~ adjuster as required by s. 626.8695.

Section 51. Section 626.8696, Florida Statutes, is amended to read:

626.8696 Application for adjusting firm license.—

(1) The application for an adjusting firm license must include:

(a) The name of each majority owner, partner, officer, and director of the adjusting firm.

(b) The resident address of each person required to be listed in the application under paragraph (a).

(c) The name of the adjusting firm and its principal business address.

(d) The location of each adjusting firm office and the name under which each office conducts or will conduct business.

(e) The name and license number of the designated primary adjuster for each adjusting firm location as required in s. 626.8695.

(f) The fingerprints of each individual required to be listed in the application under paragraph (a), filed in accordance with s. 626.171(4). However, fingerprints need not be filed for an individual who is currently licensed and appointed under this chapter.

(g) Any additional information that the department requires.

(2) An application for an adjusting firm license must be signed by one of the individuals required to be listed in the application under paragraph (1)(a) ~~each owner of the firm. If the firm is incorporated, the application must be signed by the president and secretary of the corporation~~.

~~(3) Each application must be accompanied by payment of any~~

~~applicable fee as prescribed in s. 624.501.~~

~~(4) License fees are not refundable.~~

~~(5) An adjusting firm required to be licensed pursuant to s. 626.8695 must remain so licensed for a period of 3 years from the date of licensure, unless the license is suspended or revoked. The department may suspend or revoke the adjusting firm's authority to do business for activities occurring during the time the firm is licensed, regardless of whether the licensing period has terminated.~~

Section 52. Subsection (3) of section 626.8732, Florida Statutes, is amended to read:

626.8732 Nonresident public adjuster's qualifications, bond.—

(3) At the time of application for license as a nonresident public adjuster, the applicant shall file with the department a bond executed and issued by a surety insurer authorized to transact surety business in this state, in the amount of $50,000, conditioned for the faithful performance of his or her duties as a nonresident public adjuster under the license applied for. Thereafter, the applicant shall maintain the bond unimpaired throughout the existence of the license and for 1 year after the expiration or termination of the license.

(a) The bond must be in favor of the department and must specifically authorize recovery by the department of the damages sustained if the licensee commits fraud or unfair practices in connection with his or her business as nonresident public adjuster.

(b) The aggregate liability of the surety for all the damages may not exceed the amount of the bond. The bond may not

be terminated unless at least 30 days' written notice is given to the licensee and filed with the department.

Section 53. Paragraph (a) of subsection (2) of section 626.8734, Florida Statutes, is amended to read:

626.8734 Nonresident all-lines adjuster license qualifications.—

(2) The applicant must furnish the following with his or her application:

(a) A complete set of his or her fingerprints in accordance with s. 626.171(4). ~~The applicant's fingerprints must be certified by an authorized law enforcement officer.~~

Section 54. Section 626.906, Florida Statutes, is amended to read:

626.906 Acts constituting Chief Financial Officer as process agent.—Any of the following acts in this state, effected by mail or otherwise, by an unauthorized foreign insurer, alien insurer, or person representing or aiding such an insurer is equivalent to and shall constitute an appointment by such insurer or person representing or aiding such insurer of the Chief Financial Officer to be its true and lawful agent ~~attorney~~, upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary, arising out of any such contract of insurance; and any such act shall be signification of the insurer's or person's agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer or person representing or aiding such insurer:

(1) The issuance or delivery of contracts of insurance to

residents of this state or to corporations authorized to do business therein;

(2) The solicitation of applications for such contracts;

(3) The collection of premiums, membership fees, assessments, or other considerations for such contracts; or

(4) Any other transaction of insurance.

Section 55. Subsection (4) of section 626.912, Florida Statutes, is amended to read:

626.912 Exemptions from ss. 626.904-626.911.—The provisions of ss. 626.904-626.911 do not apply to any action, suit, or proceeding against any unauthorized foreign insurer, alien insurer, or person representing or aiding such an insurer arising out of any contract of insurance:

(4) Issued under and in accordance with the Surplus Lines Law, when such insurer or person representing or aiding such insurer enters a general appearance or when such contract of insurance contains a provision designating the Chief Financial Officer or designating a Florida resident agent to be the true and lawful agent ~~attorney~~ of such unauthorized insurer or person representing or aiding such insurer upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or person representing or aiding such insurer or beneficiary arising out of any such contract of insurance; and service of process effected on such Chief Financial Officer or such resident agent shall be deemed to confer complete jurisdiction over such unauthorized insurer or person representing or aiding such insurer in such action.

Section 56. Subsections (3) and (4) of section 626.937, Florida Statutes, are amended to read:

626.937 Actions against insurer; service of process.—

(3) Each unauthorized insurer requesting eligibility pursuant to s. 626.918 shall file with the department its appointment of the Chief Financial Officer, on a form as furnished by the department, as its agent ~~attorney~~ to receive service of all legal process issued against it in any civil action or proceeding in this state, and agreeing that process so served shall be valid and binding upon the insurer. The appointment shall be irrevocable, shall bind the insurer and any successor in interest as to the assets or liabilities of the insurer, and shall remain in effect as long as there is outstanding in this state any obligation or liability of the insurer resulting from its insurance transactions therein.

(4) At the time of such appointment of the Chief Financial Officer as its process agent, the insurer shall file with the department designation of the name and e-mail address of the person to whom process against it served upon the Chief Financial Officer is to be made available through the department's secure online portal ~~forwarded~~. The insurer may change the designation at any time by a new filing.

Section 57. Subsection (5) of section 626.9953, Florida Statutes, is amended to read:

626.9953 Qualifications for registration; application required.—

(5) An applicant must submit a set of his or her fingerprints in accordance with s. 626.171(4) ~~to the department and pay the processing fee established under s. 624.501(23)~~. The department shall submit the applicant's fingerprints to the Department of Law Enforcement for processing state criminal

history records checks and local criminal records checks through local law enforcement agencies and for forwarding to the Federal Bureau of Investigation for national criminal history records checks. The fingerprints shall be taken by a law enforcement agency, a designated examination center, or another department-approved entity. The department may not approve an application for registration as a navigator if fingerprints have not been submitted.

Section 58. Paragraphs (e) and (f) are added to subsection (4) of section 633.135, Florida Statutes, to read:

633.135 Firefighter Assistance Grant Program.—

(4) Funds shall be used to:

(e) Purchase other equipment and tools that improve firesafety and fire rescue capabilities for firefighters.

(f) Purchase protective clothing and equipment compliant with NFPA 1977, "Standard on Protective Clothing and Equipment for Wildland Fire Fighting and Urban Interface Fire Fighting."

Section 59. Subsections (4) and (5) of section 633.216, Florida Statutes, are amended to read:

633.216 Inspection of buildings and equipment; orders; firesafety inspection training requirements; certification; disciplinary action.—The State Fire Marshal and her or his agents or persons authorized to enforce laws and rules of the State Fire Marshal shall, at any reasonable hour, when the State Fire Marshal has reasonable cause to believe that a violation of this chapter or s. 509.215, or a rule adopted thereunder, or a minimum firesafety code adopted by the State Fire Marshal or a local authority, may exist, inspect any and all buildings and structures which are subject to the requirements of this chapter


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or s. 509.215 and rules adopted thereunder. The authority to inspect shall extend to all equipment, vehicles, and chemicals which are located on or within the premises of any such building or structure.

(4) Every firesafety inspector certificate is valid for a period of 4 years from the date of issuance. Renewal of certification is subject to the affected person's completing proper application for renewal and meeting all of the requirements for renewal as established under this chapter or by rule adopted under this chapter, which must include completion of at least 54 hours during the preceding 4-year period of continuing education as required by the rule of the department ~~or, in lieu thereof, successful passage of an examination as established by the department~~.

~~(5) A previously certified firesafety inspector whose certification has lapsed for 8 years or more must repeat the fire safety inspector training as specified by the division.~~

Section 60. Paragraph (b) of subsection (4) and paragraphs (a) and (c) of subsection (6) of section 633.408, Florida Statutes, are amended to read:

633.408 Firefighter and volunteer firefighter training and certification.—

(4) The division shall issue a Firefighter Certificate of Compliance to an individual who does all of the following:

(b) Passes the Minimum Standards Course certification ~~examination~~ within 12 months after completing the required courses.

(6)(a) The division may issue a Special Certificate of Compliance to an individual who does all of the following:


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1. Satisfactorily completes the course established by rule by the division and successfully passes any examination corresponding to such course ~~in paragraph (1)(b)~~ to obtain a Special Certificate of Compliance.

2. ~~Passes the examination established in paragraph (1)(b) to obtain a Special Certificate of Compliance.~~

~~3.~~ Possesses the qualifications in s. 633.412.

~~(c) In order to retain a Special Certificate of Compliance, every 4 years an individual must:~~

~~1. Be active as a firefighter;~~

~~2. Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the division, which proof must be registered in an electronic database designated by the division; or~~

~~3. Within 6 months before the 4-year period expires, successfully complete a Firefighter Retention Refresher Course consisting of a minimum of 40 hours of training as prescribed by rule.~~

Section 61. Subsections (1) and (4) of section 633.414, Florida Statutes, are amended to read:

633.414 Retention of firefighter and volunteer firefighter certifications.—

(1) In order for a firefighter to retain her or his Firefighter Certificate of Compliance or Special Certificate of Compliance, every 4 years he or she must meet the requirements for renewal provided in this chapter and by rule, which must include at least one of the following:

(a) Be active as a firefighter. As used in this section,

the term "active" means being employed as a firefighter or providing service as a volunteer firefighter as evidenced by the individual's name appearing on a fire service provider's employment roster in the Florida State Fire College database or a letter by the fire service provider attesting to dates of employment.

(b) Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the division, which proof must be registered in an electronic database designated by the division.

(c) Before the expiration of the certificate ~~Within 6 months before the 4-year period expires~~, successfully complete a Firefighter Retention Refresher Course consisting of a minimum of 40 hours of training to be prescribed by rule.

(d) Before the expiration of the certificate ~~Within 6 months before the 4-year period expires~~, successfully retake and pass the Minimum Standards Course examination pursuant to s. 633.408.

~~(4) For the purposes of this section, the term "active" means being employed as a firefighter or providing service as a volunteer firefighter for a cumulative period of 6 months within a 4-year period.~~

The 4-year period may, in the discretion of the department, be extended to 12 months after discharge from military service if the military service does not exceed 3 years, but in no event more than 6 years from the date of issue or renewal, if applicable, for an honorably discharged veteran of the United

States Armed Forces or the spouse of such a veteran. A qualified individual must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran is honorably discharged.

Section 62. Subsection (4) of section 648.34, Florida Statutes, is amended to read:

648.34 Bail bond agents; qualifications.—

(4) The applicant shall furnish, with his or her application, a complete set of his or her fingerprints in accordance with s. 626.171(4) and a recent credential-sized, fullface photograph of the applicant. ~~The applicant's fingerprints shall be certified by an authorized law enforcement officer.~~ The department shall not authorize an applicant to take the required examination until the department has received a report from the Department of Law Enforcement and the Federal Bureau of Investigation relative to the existence or nonexistence of a criminal history report based on the applicant's fingerprints.

Section 63. Subsection (4) of section 648.355, Florida Statutes, is amended to read:

648.355 Temporary limited license as limited surety agent or professional bail bond agent; pending examination.—

(4) The applicant shall furnish, with the application for temporary license, a complete set of the applicant's fingerprints in accordance with s. 626.171(4) and a recent credential-sized, fullface photograph of the applicant. ~~The~~

~~applicant's fingerprints shall be certified by an authorized law enforcement officer.~~ The department shall not issue a temporary license under this section until the department has received a report from the Department of Law Enforcement and the Federal Bureau of Investigation relative to the existence or nonexistence of a criminal history report based on the applicant's fingerprints.

Section 64. Subsection (4) is added to section 648.46, Florida Statutes, to read:

648.46 Procedure for disciplinary action against licensees.—

(4) The expiration, nonrenewal, or surrender of licensure under this chapter does not eliminate the jurisdiction of the licensing authority to investigate and prosecute for a violation committed by a licensee while licensed under this chapter. The prosecution of any matter may be initiated or continued notwithstanding the withdrawal of a complaint.

Section 65. Paragraph (d) of subsection (2) and paragraphs (b), (c), and (e) of subsection (3) of section 766.105, Florida Statutes, are amended, and paragraph (i) is added to subsection (3) and subsection (4) is added to that section, to read:

766.105 Florida Patient's Compensation Fund.—

(2) COVERAGE.—

(d)1. Any health care provider who participates in the fund and who does not meet the provisions of paragraph (b) shall not be covered by the fund.

2. Annually, the Agency for Health Care Administration shall require documentation by each hospital that such hospital is in compliance, and will remain in compliance, with the

provisions of this section. ~~The agency shall review the documentation and then deliver the documentation to the board of governors. At least 60 days before the time a license will be issued or renewed, the agency shall request from the board of governors a certification that each hospital is in compliance with the provisions of this section. The board of governors shall not be liable under the law for any erroneous certification. The agency may not issue or renew the license of any hospital which has not been certified by the board of governors. The license of any hospital that fails to remain in compliance or fails to provide such documentation shall be revoked or suspended by the agency.~~

(3) THE FUND.—

(b) *Fund administration and operation.*—

1. The fund shall operate subject to the supervision and approval of the Chief Financial Officer or his or her designee ~~a board of governors consisting of a representative of the insurance industry appointed by the Chief Financial Officer, an attorney appointed by The Florida Bar, a representative of physicians appointed by the Florida Medical Association, a representative of physicians' insurance appointed by the Chief Financial Officer, a representative of physicians' self-insurance appointed by the Chief Financial Officer, two representatives of hospitals appointed by the Florida Hospital Association, a representative of hospital insurance appointed by the Chief Financial Officer, a representative of hospital self-insurance appointed by the Chief Financial Officer, a representative of the osteopathic physicians' or podiatric physicians' insurance or self-insurance appointed by the Chief~~

~~Financial Officer, and a representative of the general public appointed by the Chief Financial Officer~~. ~~The board of governors shall, during the first meeting after June 30 of each year, choose one of its members to serve as chair of the board and another member to serve as vice chair of the board. The members of the board shall be appointed to serve terms of 4 years, except that the initial appointments of a representative of the general public by the Chief Financial Officer, an attorney by The Florida Bar, a representative of physicians by the Florida Medical Association, and one of the two representatives of the Florida Hospital Association shall be for terms of 3 years; thereafter, such representatives shall be appointed for terms of 4 years. Subsequent to initial appointments for 4-year terms, the representative of the osteopathic physicians' or podiatric physicians' insurance or self-insurance appointed by the Chief Financial Officer and the representative of hospital self-insurance appointed by the Chief Financial Officer shall be appointed for 2 year terms; thereafter, such representatives shall be appointed for terms of 4 years. Each appointed member may designate in writing to the chair an alternate to act in the member's absence or incapacity. A member of the board, or the member's alternate, may be reimbursed from the assets of the fund for expenses incurred by him or her as a member, or alternate member, of the board and for committee work, but he or she may not otherwise be compensated by the fund for his or her service as a board member or alternate.~~

2. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the fund or its agents or employees, professional advisers or consultants, the

Chief Financial Officer or his or her designee ~~members of the board of governors or their alternates~~, or the Department of Financial Services or the Office of Insurance Regulation of the Financial Services Commission or their representatives for any action taken by them in the performance of their powers and duties pursuant to this section.

(c) *Powers of the fund.*—The fund has the power to:

1. Sue and be sued, and appear and defend, in all actions and proceedings in its name to the same extent as a natural person.

2. Adopt, change, amend, and repeal a plan of operation, not inconsistent with law, for the regulation and administration of the affairs of the fund. The plan and any changes thereto shall be filed with the Office of Insurance Regulation of the Financial Services Commission and are all subject to its approval before implementation by the fund. All fund members, board members, and employees shall comply with the plan of operation.

3. Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the fund is created.

4. Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this section.

5. Employ or retain such persons as are necessary to perform the administrative and financial transactions and responsibilities of the fund and to perform other necessary or proper functions unless prohibited by law.

6. Take such legal action as may be necessary to avoid payment of improper claims.

7. Indemnify any ~~employee, agent, member of the board of~~

~~governors or his or her alternate, or~~ person acting on behalf of the fund in an official capacity, for expenses, including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with any action, suit, or proceeding, including any appeal thereof, arising out of his or her capacity in acting on behalf of the fund, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the fund and, with respect to any criminal action or proceeding, he or she had reasonable cause to believe his or her conduct was lawful.

(e) *Fund accounting and audit.*—

1. Money shall be withdrawn from the fund only upon a voucher as authorized by the Chief Financial Officer or his or her designee ~~board of governors~~.

2. All books, records, and audits of the fund shall be open for reasonable inspection to the general public, except that a claim file in possession of the fund, fund members, and their insurers is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until termination of litigation or settlement of the claim, although medical records and other portions of the claim file may remain confidential and exempt as otherwise provided by law. Any book, record, document, audit, or asset acquired by, prepared for, or paid for by the fund is subject to the authority of the Chief Financial Officer or his or her designee ~~board of governors~~, which shall be responsible therefor.

3. Persons authorized to receive deposits, issue vouchers, or withdraw or otherwise disburse any fund moneys shall post a

blanket fidelity bond in an amount reasonably sufficient to protect fund assets. The cost of such bond shall be paid from the fund.

4. Annually, the fund shall furnish, upon request, audited financial reports to any fund participant and to the Office of Insurance Regulation and the Joint Legislative Auditing Committee. The reports shall be prepared in accordance with accepted accounting procedures and shall include income and such other information as may be required by the Office of Insurance Regulation or the Joint Legislative Auditing Committee.

5. Any money held in the fund shall be invested in interest-bearing investments ~~by the board of governors of the fund as administrator~~. However, in no case may any such money be invested in the stock of any insurer participating in the Joint Underwriting Association authorized by s. 627.351(4) or in the parent company of, or company owning a controlling interest in, such insurer. All income derived from such investments shall be credited to the fund.

6. Any health care provider participating in the fund may withdraw from such participation only at the end of a fiscal year; however, such health care provider shall remain subject to any assessment or any refund pertaining to any year in which such member participated in the fund.

(i) *Dissolution of the fund.*—The fund shall operate subject to the supervision of the Chief Financial Officer or his or her designee, pursuant to the policies and procedures and under the auspices of the Department of Financial Services, Division of Rehabilitation and Liquidation, until the department executes a legal dissolution of the fund on or before December 31, 2023.

Before the legal dissolution of the fund, the Department of Financial Services must:

1. Obtain all existing records and retain necessary records of the fund pursuant to law.

2. Identify all remaining property held by the fund and attempt to return such property to its owners and, for property that cannot be returned to the owner, transfer such property to the Department of Financial Services, Division of Unclaimed Property.

3. Make a final accounting of the finances of the fund.

4. Ensure that the fund has met all its obligations pursuant to structured settlements, annuities, or other instruments established to pay covered claims, and, if the fund has not done so, attempt to meet such obligations before final and complete dissolution of the fund.

5. Sell or otherwise dispose of all physical assets of the fund.

6. Execute a legal dissolution of the fund.

7. Transfer any remaining money or assets of the fund to the Chief Financial Officer for deposit in the General Revenue Fund.

(4) REPEAL.—This section is repealed January 1, 2024.

Section 66. Paragraph (b) of subsection (1) of section 945.6041, Florida Statutes, is amended to read:

945.6041 Inmate medical services.—

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

(b) "Health care provider" means:

1. A hospital licensed under chapter 395.

2. A physician or physician assistant licensed under

chapter 458.

3. An osteopathic physician or physician assistant licensed under chapter 459.

4. A podiatric physician licensed under chapter 461.

5. A health maintenance organization certificated under part I of chapter 641.

6. An ambulatory surgical center licensed under chapter 395.

7. A professional association, partnership, corporation, joint venture, or other association established by the individuals set forth in subparagraphs 2., 3., and 4. for professional activity.

8. Other medical facility.

a. As used in this subparagraph, the term "other medical facility" means:

(I) A facility the primary purpose of which is to provide human medical diagnostic services, or a facility providing nonsurgical human medical treatment which discharges patients on the same working day that the patients are admitted; and

(II) A facility that is not part of a hospital.

b. The term does not include a facility existing for the primary purpose of performing terminations of pregnancy, or an office maintained by a physician or dentist for the practice of medicine ~~has the same meaning as provided in s. 766.105~~.

Section 67. Paragraph (a) of subsection (1) of section 985.6441, Florida Statutes, is amended to read:

985.6441 Health care services.—

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

(a) "Health care provider" means:

1. A hospital licensed under chapter 395.

2. A physician or physician assistant licensed under chapter 458.

3. An osteopathic physician or physician assistant licensed under chapter 459.

4. A podiatric physician licensed under chapter 461.

5. A health maintenance organization certificated under part I of chapter 641.

6. An ambulatory surgical center licensed under chapter 395.

7. A professional association, partnership, corporation, joint venture, or other association established by the individuals set forth in subparagraphs 2., 3., and 4. for professional activity.

8. Other medical facility.

a. As used in this subparagraph, the term "other medical facility" means:

(I) A facility the primary purpose of which is to provide human medical diagnostic services, or a facility providing nonsurgical human medical treatment which discharges patients on the same working day that the patients are admitted; and

(II) A facility that is not part of a hospital.

b. The term does not include a facility existing for the primary purpose of performing terminations of pregnancy, or an office maintained by a physician or dentist for the practice of medicine ~~has the same meaning as provided in s. 766.105~~.

Section 68. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2022.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1874
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Banking and Insurance Committee; and Senator Boyd
SUBJECT:	Department of Financial Services
DATE:	March 2, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Sanders	Betta	AEG	**Recommend: Fav/CS**
3.	Sanders	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1874 amends sections of Florida Statutes relating to the powers and duties of the Department of Financial Services (DFS). The Chief Financial Officer (CFO) is the head of the DFS. The bill, as originally filed, revises service of process requirements by providing the service of process is valid and binding upon the insurer on the date the process served on the CFO is delivered to the insurer, or the insurer has been notified by the DFS that such information has made been made available on the DFS online portal. In addition, the committee substitute provides the following additional changes:

Division of Insurance Agents and Agencies

- Adds an exemption to the examination requirements for an all-lines adjuster who has received the designation of a Certified All Lines Adjuster from Kaplan Financial Education;
- Authorizes an adjuster who holds an adjuster license and who is an unaffiliated insurance agent to obtain an adjuster appointment while maintaining his or her unaffiliated agent appointment. This will allow the adjuster to adjust claims and receive compensation;
- Limits the appointment of a public adjuster apprentice to a public adjusting firm who may appoint a public adjuster apprentice. Currently a public adjuster may also appoint an apprentice;
- Revises provisions relating to fingerprinting requirements to comply with federal law;

- Creates notice requirements for agencies that cease doing business, and creates penalties for noncompliance;
- Increases the authority of the DFS to investigate and prosecute violations committed by a licensee while licensed under ch. 626, F.S., even if the license has expired, is not renewed, or is surrendered; and
- Revises compensation for public adjusters by requiring the compensation be based on the recovery allocated to the insured for covered damage, exclusive of attorney fees and costs.

Funeral, Cemetery, and Consumer Services

- Eliminates the fee cap of $50 for a consumer transferring the burial rights from one purchaser to another and revises the licensure requirements for embalmers and funeral directors.

State Fire Marshal

- Authorizes expenditure of funds from the Firefighter Assistance Grant Program for the purchase of other equipment and tools and protective clothing and equipment compliant with certain standards;
- Revises firefighter certification requirements; and
- Revises provisions relating to the inspection of boiler rooms.

Division of Workers' Compensation

- Clarifies the definition of employer;
- Clarifies an employer applying for an exemption from workers' compensation coverage to provide a *valid* driver license or *valid* identification card. An applicant is also required to complete an online the FS coverage and compliance tutorial as a condition for application;
- Revises the formula for calculating coverage penalties to reduce the period subject to a penalty with exceptions;
- Provides a penalty credit for an employer who has been issued a stop-work order or an enforcement action if the employer successfully completes an online coverage and compliance tutorial;
- Extends the deadline for an employer to produce requested business records from 10 business days to 21 days before the DFS can take an administrative action;
- Requires an employer to pay any outstanding assessed payment prior to entering into a new penalty payment program with the DFS;
- Requires the carrier to send an informational brochure to the injured worker within three business days, instead of three days, after the employee or employer notifies the carrier of an injury. A carrier or its third party administrator is authorized to provide the informational brochure to an injured worker or an employer by e-mail or regular mail; and
- Revises onsite audit requirements for construction classes by requiring such annual audits if the estimated annual premium is $10,000 or more. Currently, there is no minimum threshold.

Division of Accounting and Auditing

- Amends provisions relating to the Planning and Accounting, Ledger Management system (PALM) and local government financial reporting.

Division of Rehabilitation and Liquidation

- Provides employees and retired employees of the Division of Rehabilitation and Liquidation or their surviving spouses are enrollees of the state group insurance program.

Florida Patient's Compensation Fund (Fund)

- Revises structure and authority of the Fund by eliminating the board of governors of the Fund and transferring the supervision of the Fund to the CFO or his or her designee.
- Prescribes duties of the CFO and the DFS to wind down the Fund, and to dissolve the Fund on or before December 31, 2023.

The bill may have an insignificant but indeterminate impact on state revenues and expenditures. *See* Section V. Fiscal Impact Statement.

Except as otherwise expressly provided, this act takes effect July 1, 2022.

II. Present Situation:

The Chief Financial Officer (CFO) is the chief fiscal officer of Florida and is responsible for settling and approving accounts against the state and keeping all state funds and securities.[1] The CFO serves as the head of the Department of Financial Services (DFS or department). Offices and divisions within the DFS include:

- Insurance Consumer Advocate;
- Accounting and Auditing;
- Administration;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services;
- Public Assistance Fraud;
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;
- Unclaimed Property; and
- Workers' Compensation.[2]

Division of Accounting and Auditing

Section 215.93, F.S., establishes the Florida Financial Management Information System (FFMIS) for the state. The intent of the FFMIS is to ensure the efficient operation of an integrated financial management information system and to provide necessary information for the effective operation of state government.[3] The Florida Accounting Information Resource

[1] Section 17.001, F.S.
[2] Department of Financial Services, *Divisions and Offices* https://www.myfloridacfo.com/ (last visited Jan. 17, 2022).
[3] Section 215.93(1), F.S.

Subsystem (FLAIR) is the state's accounting system, and it is a subsystem of the FFMIS.[4] The functions of FLAIR include accounting and reporting of information to producing financial statements for the state and auditing and settling claims against the state.[5] In 2014, DFS created the Florida Planning, Accounting, and Ledger Management (PALM) Project to replace the State of Florida's current accounting and cash management systems with an integrated, enterprise financial management solution that will allow the state to organize, define, and standardize its financial management processes. The Florida PALM Project is a multiyear project.[6]

The Division of Accounting and Auditing, Bureau of Financial Reporting (Bureau), is responsible for the oversight of local government financial reports and the Comprehensive Annual Financial Reports (CAFR). The Chief Financial Officer is required to publish a CAFR in accordance with generally accepted accounting principles (GAAP).[7] The CAFR includes the audited financial statements, other disclosures, and supplementary information, presenting the state's financial condition and results of operations during the fiscal year.[8] The Government Accounting Standards Board (GASB) establishes accounting and financial reporting standards for U.S. state and local governments that follow GAAP and recently changed the term, "Comprehensive Annual Financial Report" (CAFR)[9] to the term, "Annual Comprehensive Financial Report" (ACFR).

Chapter 218, F.S., prescribes financial management and reporting requirements for local governments, which include counties, municipalities, and special districts. The Division of Accounting and Auditing's website provides resources to assist local governments in fulfilling their reporting requirements.[10] Local governments must submit their annual financial reports (AFRs) to the DFS and provide their audited financial statements.[11] The AFR is available to the public in the local government electronic reporting (LOGER).

In 2018,[12] legislation was enacted to require the DFS to create an interactive repository of financial statement information, known as the Florida Open Financial Statement System.[13] This system must have standardized taxonomies for state, county, municipal, and special district financial filings. The Division of Accounting & Auditing and the Office of Information Technology are designing the Florida Open Financial Statement System.[14]

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[4] Section 215.93(1)(b), F.S. The DFS is the functional owner of FLAIR. Section 215.94(2), F.S.
[5] Section 215.94(2), F.S.
[6] *Id.*
[7] Section 216.102(3), F.S.
[8] *See* Florida's Comprehensive Annual Financial Report, Fiscal Year ended June 30, 2020, https://www.myfloridacfo.com/division/aa/reports/documents/DeptofFinServ-StateofFLCAFR2020-FINAL-2-26-2021.pdf (last visited Feb. 7, 2022).
[9] GASB, Statement No. 98, The Annual Comprehensive Financial Report, (Oct. 2021), https://www.gasb.org/jsp/GASB/Document_C/DocumentPage?cid=1176178723455&acceptedDisclaimer=true (last visited Feb. 7, 2022).
[10] Department of Financial Services, Division of Accounting and Auditing, Local Governments, https://www.myfloridacfo.com/division/aa/localgovernments/ (last visited Feb. 7, 2022).
[11] Section 218.32, F.S.
[12] Ch. 2018-102, s. 4, Laws of Fla.
[13] Section 218.32(1)(h), F.S.
[14] Department of Financial Services, Florida Open Financial Statement Project, https://www.myfloridacfo.com/division/aa/projects/flopenfinancialstmtproject.htm (last visited Feb. 7, 2021).

Division of Rehabilitation and Liquidation

Federal law provides insurance companies may not file for bankruptcy.[15] The state, through the Division of Rehabilitation (division or receiver), is instead responsible for rehabilitating or liquidating an insurer.[16] States primarily regulate insurance companies, and the state of domicile serves as the primary regulator for insurers. The receiver administers insurance companies placed into receivership in Florida.[17]

Insurance companies in receivership fund positions within the division. Since these positions are not appropriated from state funds, the positions are not state employee positions and are not eligible for the state group insurance program.[18] Because the division must purchase health insurance in the small group market, it is unable to leverage the economies of scale, and faces yearly premium increases. The division anticipates these increases will continue to occur in the future, which ultimately affects the claimants in the receivership estates. The division is a participating entity of the Florida Retirement System.[19] The division also participates in the State's Deferred Compensation program.

Division of Funeral, Cemetery, and Consumer Services

Section 20.121(4), F.S., creates the Board of Funeral, Cemetery, and Consumer Services (board) within the Division of Funeral, Cemetery, and Consumer Services of the DFS. The board acts as the licensing and rulemaking authority for the purposes of certain matters related to examinations and other substantive requirements for licensure within the death care industry under ch. 497, F.S., including facility requirements.[20]

Fees

Current law imposes a maximum charge to consumers of $50 for transference of burial rights from one purchaser to another.[21]

[15] The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. s. 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. *See* 15 U.S.C. ss. 1011- 1012.
[16] Sections 631.051 and 631.061, F.S. Chapter 631, F.S., governs the receivership process for insurance companies in Florida.
[17] *Id.*
[18] Department of Financial Services, Division of Rehabilitation and Liquidation, https://myfloridacfo.com/division/receiver/career-opportunities/humanresources-recruitmentandselection (last visited Feb. 7, 2022).
[19] *Id.*
[20] *See* s. 497.103(1)(a)-(cc), F.S. Licenses available to natural persons include: embalmer apprentice and intern; funeral directors and intern; funeral director and embalmer, direct disposer, monument establishment sales agent, and preneed sales agent. Section 497.141(12)(a), F.S. Licenses available to natural persons, corporations, limited liability companies, and partnerships include: funeral establishment, centralized embalming facility, refrigeration facility, direct disposal establishment, monument establishment, cinerator facility, removal service, preneed sales business under s. 497.453, F.S., and cemetery. Section 497.141(12)(b)-(c), F.S. sets forth who may apply for which licenses.
[21] Section 497.277(2), F.S.

Licensure

There are several options available for embalmers or funeral directors to obtain reciprocal licensure in Florida.[22] One method to receive a reciprocal licensure for an embalmer is to hold a valid licensure in a state that has requirements at the time of original licensure that are substantially equivalent to or more stringent than Florida's requirements at the same time.[23]

A funeral director may apply to obtain a reciprocal licensure in Florida if the provisions of s. 497.374, F.S., are met. The applicant must hold a valid license to practice funeral directing in another state, provided that, when the applicant secured her or his original license, the requirements for licensure were substantially equivalent to or more stringent than those existing in Florida.[24]

Current law prescribes the scope of practice of funeral directing a licensed funeral director may perform.[25] These duties include:

- Selling or offering to sell funeral services;
- Planning or arranging the details of the funeral services;
- Embalming, cremation, or other services relating to the final disposition of human remains; including the removals of such remains from the state;
- Setting the time of the service;
- Establishing the type of services to be rendered;
- Acquiring the services of the clergy;
- Obtaining vital information for the filing of death certificates and burial transit permits; or
- Directing any memorial services that is held prior to or within 72 hours of the burial or cremation if such service is old or arranged by the licensee.

Division of Insurance Agents and Agencies

Chapter 626, F.S., governs the regulation of insurance field representatives, navigators, insurance administrators, unauthorized insurers and surplus lines, viatical settlements, structured settlements, and operations.[26] The powers and duties of the CFO and the DFS in part I of ch. 626, F.S., apply only with respect to insurance agents, insurance agencies, managing general agents, insurance adjusters, reinsurance intermediaries, viatical settlement brokers, customer representatives, service representatives, and agencies.[27] Further, the DFS has jurisdiction to enforce provisions of parts VIII and IX of ch. 626, F.S., with respect to persons engaged in actions for which a license issued by the DFS is required.[28] The powers and duties of the

[22] Section 497.369, F.S.
[23] Section 497.369
[24] Section 497.374(1)(b), F.S.
[25] Section 497.372(1), F.S.
[26] This includes licensing and other requirements (part I), general lines agents (part II), life insurance agents (part III), health insurance agents (part IV), title insurance agents (part V), insurance adjusters (part VI), insurance administrators (part VII), and viatical settlements (part X).
[27] Section 626.016(1), F.S.
[28] Section 626.016(3), F.S.

Financial Service Commission and the Office of Insurance Regulation (OIR)[29] specified in part I apply only with respect to service companies, insurance administrators, and viatical settlement providers and contracts.[30] The OIR has jurisdiction to enforce provisions of parts VIII and IX of ch. 626, F.S., with respect to persons who engage in actions for which a license or certificate of authority issued by the OIR is required.[31] However, s. 626.016, F.S., is not intended to limit the authority of the DFS and the Division of Investigative and Forensic Services within the DFS, as specified in s. 626.989, F.S.

The Division of Insurance Agent and Agency Services (division) licenses and appoints individuals and entities authorized to transact insurance in Florida as provided in s. 626.016, F.S. Further, the division receives and reviews applications for insurance licenses and oversees the examination, licensing, and continuing education of licensees. The division also conducts investigations of alleged violations of the Florida Insurance Code and refers suspected criminal violations of the Florida Insurance Code to the Division of Investigative and Forensic Services' Bureau of Insurance Fraud within the DFS or other law enforcement agencies as appropriate.[32]

Section 626.112, F.S., states that no person may be, act as, or advertise or hold himself or herself out to be an insurance agent, insurance adjuster, customer representative, service representative, or managing general agent unless he or she is currently licensed by the department and appointed by an appropriate appointing entity or person. All licenses require an appointment with the exception of insurance agency licenses.

Agents with Unaffiliated appointments

Unaffiliated insurance agents, are those licensees, except a limited lines agent, who are self-appointed and who practice as an independent consultant in the business of analyzing and abstracting insurance policies, providing insurance advice or counseling, or making specific recommendations or comparisons of insurance products for a fee established in advance in a written contract signed by the parties. An unaffiliated insurance agent may not be affiliated with an insurer, insurer-appointed insurance agent, or insurance agency contracted with or employing insurer-appointed insurance agents.[33] According to the DFS, unaffiliated appointments were intended to allow a licensee to hold their license in good standing, giving the licensee credentials in the knowledge for holding a license, without soliciting insurance coverage.[34]

[29] Pursuant to s. 20.121(3), F.S., the Office of Insurance Regulation is an office within the Financial Services Commission (FSC). The FSC is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. The FSC members serve as the agency head for purposes of rulemaking under ss. 120.536-120.565, F.S.
[30] Section 626.016(2), F.S.
[31] Sections 626.016(3), F.S.
[32] Sections 624.307, 624.317, and 624.321, F.S.
[33] Section 626.015(20), F.S.
[34] Department of Financial Services, *2022 Legislative Bill Analysis of SB 1874* (January 18, 2022) (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

Insurance Adjuster Licensure Examination

An adjuster is an individual employed by an insurer to evaluate losses and settle policyholder claims.[35] An adjuster may be licensed as either an "all-lines adjuster" or a "public adjuster."[36] An all-lines adjuster "is a person who, for money, commission, or any other thing of value, directly or indirectly undertakes on behalf of a public adjuster or an insurer to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage."[37] Subject to certain exceptions, a public adjuster is someone that is paid by an insured to prepare and file a claim against his or her insurer.[38]

Among other requirements, an applicant must pass an examination to obtain an adjuster's license; however, the examination requirement is waived if the applicant has attained certain professional designations that document their successful completion of professional education coursework. An examination is not required for all-lines adjuster applicants that obtains certain specified professional designations.[39] The DFS must approve the curriculum, which must include comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard the DFS testing for the all-lines adjuster license.[40]

Closure of an Insurance Agency

Currently an agency is not required to provide notification to a policyholder or premium finance company or follow protocols when an agency is closing for an extended period or closing permanently.

Division of State Fire Marshal

The Division of State Fire Marshal protects people and property throughout Florida and has authority to inspect buildings, structures, equipment, vehicles and chemicals when there is reasonable cause to believe a violation of the Florida Fire Code has occurred.[41] The Division of State Fire Marshal:

- Conducts safety inspections and reviews construction plans for all state-owned buildings, regulates fireworks and the fire sprinkler industry, inspects and licenses boilers, and certifies persons working in the fire suppression industry; and
- Approves curricula and training at the Florida State Fire College and certifies that fire service members meet industry standards.[42]

[35] Insurance Information Institute. *I.I.I. Glossary* (defining "adjuster"), https://www.iii.org/resource-center/iii-glossary/A (last visited Feb. 7, 2022).
[36] Section 626.864, F.S.
[37] Sections 626.015 and 626.8548, F.S.
[38] Section 626.854(1), F.S.
[39] Section 626.221, F.S.
[40] Section 626.221(2)(j), F.S.
[41] Department of Financial Services, Division of State Fire Marshal, https://www.myfloridacfo.com/division/sfm/ (last visited Feb. 7, 2022).
[42] *Id.*

Firefighter Certification

To be certified as a firefighter, a person must complete a minimum standards course and examination established by the State Fire Marshal or show proof of equivalent training in another state, and pass an exam within one year of completing the minimum standards course.[43] Additionally, the applicant must be in good physical condition, as determined by a medical examination, and have good moral character, as determined by a background investigation that includes the processing of fingerprints for a national criminal background check.[44]

To serve as an administrative and command head of a fire service provider, or to work in a position directing incident outcomes, a certified firefighter must earn a Special Certificate of Compliance.[45] Such person must be active as a firefighter, maintain a valid fire service instructor certificate and teach at least 40 hours of instruction during a four-year period, and complete a Firefighter Retention Refresher Course prior to expiration of the four-year period.[46]

To renew a certification, a firefighter must:
- Be active as a firefighter, meaning the certificate holder was employed as a firefighter or served as a volunteer firefighter for at least six months during a four-year period; or
- Hold a fire service instructor certificate and instruct at least 40 hours during a four-year period, or
- Complete a Firefighter Retention Refresher Course during the six months before the four-year period expires, or
- Retake and pass the Minimum Standards Course examination during the six months before the four-year period expires.[47]

Firefighter Assistance Grant Program

The Firefighter Assistance Grant was created to improve the emergency response capability of volunteer fire departments and combination fire departments.[48] The program is required to provide financial assistance to improve firefighter safety and to enable such fire departments to provide firefighting, emergency medical, and rescue services to their communities.[49] Funding is available for training, personal protective equipment, self-contained breathing apparatus, and fire engine pumper apparatus.[50] According to the DFS, many of the fire departments that are eligible to participate in this grant program are in rural economically challenged areas of the state and have limited funding opportunities to purchase additional crucially needed tools and equipment.[51]

[43] Section 633.408(4), F.S.
[44] Sections 633.408 and 633.412, F.S.
[45] Section 633.408(6), F.S.
[46] *Id*.
[47] Section 633.414, F.S.
[48] Section 633.135(1), F.S. Combination fire department is a fire department that is composed of career and volunteer firefighters.
[49] Section 633.135, F.S., and Rule 69A-37-501, F.A.C.
[50] Section 633.135(4), F.S.
[51] The Department of Financial Services, *2022 Legislative Bill Analysis of HB 959* (Similar to SB 1874) (Dec. 22, 2022).

Boiler Safety Act

Chapter 554, F.S., is the "Boiler Safety Act."[52] The DFS is authorized to adopt by rule a State Boiler Code for the safe construction, installation, inspection, maintenance, and repair of boilers in Florida.[53] The State Fire Marshall performs inspections to ensure the safety of boilers in public buildings.[54] Boiler inspectors must meet initial and ongoing certification requirements.[55] The DFS may impose various fees, such as, initial and annual certificates of competency, certificate inspections.

According to the DFS, some provisions within ch. 554 are outdated. For example, a requirement for American Society of Mechanical Engineers (ASME)[56] stamping of boilers between 200,000 and 400,000 BTU has been in the statute for several years but did not have a phase in date to allow for utilization of manufacturer's inventory. [57] Additionally, the carbon monoxide detector requirement of ch. 509, F.S., lacks clarity as to the enforcement ability of authorized third-party inspectors.[58]

Division of Workers' Compensation

The workers' compensation law[59] requires an employer[60] to obtain coverage for their "employees" that provides for lost income and all medically necessary remedial treatment, attendance, and care resulting from work related injuries and occupational diseases. The Division of Workers' Compensation[61] within the DFS provides regulatory oversight of the system.[62] The DFS' responsibilities include enforcing employer compliance with coverage requirements,[63] administration of the workers' compensation health care delivery system, collecting system data, educating and assisting employers and injured workers.

[52] Section 554.1011, F.S.
[53] Section 554.103, F.S.
[54] Department of Financial Services, Division of State Fire Marshal, Boiler Safety Section, https://www.myfloridacfo.com/Division/sfm/BFP/BoilerSafety/default.htm (last visited Feb. 7, 2022).
[55] Section 554.104, F.S.
[56] "ASME Code" is the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code published by that Society, which are incorporated by reference in Rule 69A-51.010, F.A.C. See Rule 69A-51.005(6), F.A.C.
[57] The Department of Financial Services (DFS), *2022 Legislative Bill Analysis of SB 1874* (January 18, 2022) (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).
[58] *Id.*
[59] Ch. 440, F.S.
[60] Employer" means the state and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustees of any person. "Employer" also includes employment agencies, employee leasing companies, and similar agents who provide employees to other persons. s. 440.02(16), F.S. The most common exception to this is non-construction industry employers with fewer than four employees. There are a number of other exceptions, exclusions, and exemptions that affect whether an employer must provide workers' compensation coverage generally or to a particular individual. See s. 440.02(15)–(17), F.S.
[61] Department of Financial Services, Division of Workers' Compensation, *About the Division*, https://www.myfloridacfo.com/Division/WC/contactUs.htm (last visited Feb. 7, 2022).
[62] Section 440.191, F.S.
[63] Section 440.107, F.S.

Coverage Requirements; Enforcement

Whether an employer is required to have workers' compensation insurance depends upon the employer's industry (i.e., construction, non-construction, or agricultural) and the number of employees.[64] The coverage thresholds are as follows:

- Construction – one or more "employees;"
- Non-construction – four or more "employees;" and
- Agricultural - six or more regular employees and/or 12 or more seasonal employees who work for more than 30 days.[65]

Employers may obtain coverage by purchasing a workers' compensation insurance policy from an insurer; purchasing coverage from the Workers' Compensation Joint Underwriting Association (for employers that are unable to purchase a workers' compensation insurance policy from an authorized insurance company); or qualifying as a self-insurer.[66] In order to apply for or renew an exemption from workers' compensation law, the exemption applicant must complete and submit a Notice of Election to be Exempt application online. The notice must list the name, date of birth, and driver's license number of Florida identification card number, and other specified information.[67]

The DFS has the authority to enter and inspect any place of business for purposes of ensuring employer compliance with workers' compensation law, and the DFS can request an employer's business records.[68] An employer must produce the required business records within ten business days of receiving the written request for records. The failure of an employer to comply with the workers' compensation coverage requirements is considered to pose an immediate danger to public health, safety, and welfare; the DFS must issue a Stop-Work Order within 72 hours of determination of non-compliance, which requires the employer to cease all business operations.[69] The DFS may release a Stop-Work Order when an employer provides proof of compliance and pays $1,000, as a down payment, and agrees to enter into a penalty payment agreement with the DFS for the full amount.[70] The penalty is a minimum of $1,000 and is based on the insurance premiums, which should have been paid, but were not, multiplied by two for the prior two years.[71]

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[64] The terms "injured employee" and "injured worker" are used interchangeably throughout ch. 440, F.S., in relation to individuals claiming or receiving workers' compensation benefits. However, neither term is expressly defined in the workers' compensation law. Since the term "injured employee" implies a continuing employment relationship that may not in fact exist following an injury, this analysis will use the term "injured worker" exclusively, but it is intended to mean both "injured employee" and "injured worker" wherever it is used, unless the context or law requires otherwise. The term "injured employee" is not same as "employee." The former denotes one who is claiming benefits following an injury, while the latter denotes one who may be subject to the coverage requirements of the workers' compensation law, depending upon the circumstances of their employment and nature of their employer.

[65] Department of Financial Services, Division of Workers' Compensation, *Coverage Requirements*, https://www.myfloridacfo.com/division/wc/employer/coverage.htm (last visited Feb. 7, 2022).

[66] Sections 440.38 and 627.311(5), F.S.

[67] Section 440.05(3), F.S.

[68] Section 440.107(7)(a), F.S.

[69] *Id.*

[70] Section 440.107(7)(d), F.S.

[71] *Id.*

Reporting by Carriers and Audits by Carriers

Within three days after the employer or the employee informs the carrier of an injury, the carrier must mail to the injured worker an informational brochure approved by the DFS that provides an explanation of the rights, benefits, procedures for obtaining benefits and assistance, criminal penalties, and obligations of injured workers and their employers under the Florida Workers' Compensation Law.[72]

Further, the carrier or its third-party administrator is required to mail the same brochure annually to employers.[73]

The Chief Financial Officer as Agent for Service of Process on Insurers

Florida's Chief Financial Officer[74] (CFO) is the agent for service of process on all insurers applying for authority to transact insurance in this state, all licensed nonresident insurance agents, all nonresident disability insurance agents licensed pursuant to s. 626.835, F.S., any unauthorized insurer under s. 626.906, F.S. or s. 626.937, F.S., domestic reciprocal insurers, fraternal benefit societies under ch. 632, F.S., warranty associations under ch. 634, F.S., prepaid limited health service organizations under ch. 636, F.S., and persons required to file statements under s. 628.461, F.S.[75]

Service of process on the CFO is made by mail, personal service, or internet-based transmission system created by the DFS.[76] Upon receipt of service of process, the CFO retains a record copy in paper or electronic form and promptly forwards one copy of the process documents to the insurer's designated process agent by registered or certified mail.[77] The CFO may also make the process documents available from a secure website created by the DFS and provide notice of availability and retrieval instructions to the insurer's designated process agent under s. 624.307(9), F.S. Under current law, service of process is considered valid and binding service on the insurer when the process documents are served on the CFO and sent or made available to the insurer pursuant to s. 624.307(9), F.S., rather than at such time the insurer receives the process documents.[78]

Recent court cases have addressed similar questions related to whether service of process on an insurer is perfected at the time served on the CFO or at the time received by the insurer. For example, in *Markovits*,[79] an uninsured motorist lawsuit that also involved an award of attorney fees for a rejected proposal for settlement, the court was asked to determine whether a proposal for settlement served on the insurer 91 days after service of the complaint on the CFO but 88 days after the complaint was forwarded by the CFO to the insurer, constituted valid service within a 90-day deadline for proposals for settlement on the insurer. In addition to finding statutory authority under s. 624.423(3), F.S., the court ultimately based its decision on

[72] Section 440.185(3), F.S.
[73] *Id.*
[74] The CFO's assistant, deputy, or another person in charge of the office may also serve as the agent for service of process.
[75] Section 48.151(3), F.S.
[76] *Id.*
[77] Section 624.423(1), F.S.
[78] Section 624.423(3), F.S.
[79] *Markovits v. Stater Farm Mutual Automobile Insurance*, 235 So. 3d 1018 (Fla. 1st DCA 2018).

s. 48.151(1), F.S., relating to service on statutory agents for certain persons, citing in part "[w]hen any law designates a public officer, board, agency, or commission as agent for service of process" and the person or entity so designated is served with process, then "service is valid service for all purposes," and holding that service of process is considered valid and binding on the insurer when served on the CFO.[80]

Fingerprints for Background Checks

The Florida Insurance Code authorizes the DFS to investigate any applicant or licensee, and further states that licensing statutes, which require an evaluation of an applicant's character or fitness must include the submission of fingerprints for a national criminal records check.[81] Applicants and licensees submit fingerprints to the Florida Department of Law Enforcement (FDLE), which forwards the fingerprints to the Federal Bureau of Investigations (FBI) for a federal background check.[82] The federal check is conducted through the FBI, which manages a criminal history record information (CHRI) system, through which this information can be obtained. The purpose of the CHRI system is to assure criminal history record information wherever it appears is collected, stored, and disseminated in a manner to ensure the accuracy, completeness, currency, integrity, and security of such information and to protect individual privacy.[83]

Federal law authorizes the exchange of CHRI with officials of state and local governmental agencies for licensing and employment purposes.[84] However, this access can only be authorized by a state statute, which has been subsequently approved by the Attorney General of the United States. The FBI processes fingerprints only if the criteria established by the U.S. Department of Justice has been satisfied. To satisfy federal law, a state licensing statute must identify the specific categories of licenses that require the submission of fingerprints as part of an application and expressly state the applicant's fingerprints will be submitted to the FBI or submitted for a national criminal records background check.

The DFS has recommended many technical amendments to licensing laws including chs. 626 and 648, F.S., to ensure compliance with federal law and continuation of FBI background checks for applicants seeking licensure with DFS.[85]

Florida's Patient Compensation Fund

In response to the mid-1970's medical malpractice crisis, the Florida Legislature enacted comprehensive medical malpractice reforms with the passage of "The Medical Malpractice Reform Act of 1975."[86] One of the main features of the 1975 Medical Malpractice Act was the creation of the Florida Patient's Compensation Fund (Fund), which was designed to provide

[80] *Markovitz* at 1020.
[81] Section 626.201, F.S.
[82] Section 624.34, F.S.
[83] 28 C.F.R. s. 20.1
[84] Pub. L. 92-544.
[85] Department of Financial Services (DFS), *2022 Legislative Bill Analysis of SB 1874* (January 18, 2022) (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).
[86] Ch. 75-9, Laws of Fla.

medical malpractice coverage to doctors, practitioners, hospitals, and health care facilities that were unable to purchase coverage in the commercial market. Participants had to show proof of $100,000 coverage from an insurer or self-insurance plan and deposit an annual fee into the Fund.[87] The Fund paid the excess over $100,000 for any judgment or settlement against a member. The Fund was capped at $25 million and could not pay more than one million dollars on a given claim in any single year.[88] The Fund commenced operations on July 1, 1975, in accordance with s. 766.105, F.S. The Fund is a political subdivision of the state; however, it is not a state agency, board, or commission.[89]

The Fund is subject to the supervision of a Board of Governors (board) consisting of 11 representatives.[90] Seven representatives, one each from the insurance industry, physicians' insurance, physicians' self-insurance, hospital insurance, hospital self-insurance, osteopathic or podiatric physicians' insurance or self-insurance, and the general public, are appointed by the CFO.[91] The Florida Bar appoints one attorney, the Florida Medical Association appoints one physician's representative, and the Florida Hospital Association appoints two hospital representatives.[92]

The Fund attracted providers and ran smoothly for a few years but was not actuarially sound, so substantial losses began to accumulate.[93, 94] In 1982, the Fund assessed its members to cover deficits, hospitals dropped out because most of the claims were against physicians, and the Fund was unable to continue operating.[95] During its short tenure, the Fund received $72 million in membership fees and $280 million in assessments; closed 4,595 claims and paid more than $311 million to victims of medical malpractice.[96]

Initially, the Fund was scheduled for sunset in 1991 and repeal in 1995; however, during a special session in 1991 the Legislature revived and readopted all statutes that had been subject to future repeal, including Section 766.105, F.S.[97] As a result, the law has not been subject to sunset review even though the Fund has not accepted new members since June 30, 1983.[98]

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[87] Section 766.105(2)(d)2, F.S.
[88] Section 765,105, F.S.
[89] Section 766.105(1)(a), F.S.
[90] Section 766.105(3)(b), F.S.
[91] *Id*.
[92] *Id*.
[93] *The Florida Patient's Compensation Fund: Status Report on Terminating Activities of the Fund*, Section 766.105(3)(h), F.S., provides that the Fund must determine whether it has minimum membership levels to offer coverage one week prior to the beginning of each fiscal year. The minimum membership thresholds of $5 million for non-hospital providers and $12.5 million for hospitals could not be met when hospitals stopped participating.
[94] U.S. General Accounting Office, *Medical Malpractice Case Study on Florida*, *Report to Congressional Requestors*, December 1986, at 8, www.gao.gov/assets/hrd-87-21s-3.pdf (last visited Feb. 8, 2022); and Florida House of Representatives Committee on Insurance, *The Florida Patient's Compensation Fund: Status Report on Terminating Activities of the Fund*, at 1-7 (December 10, 1994).
[95] U.S. General Accounting Office, *Medical Malpractice Case Study on Florida*, *Report to Congressional Requestors*, December 1986, at 10, www.gao.gov/assets/hrd-87-21s-3.pdf (last visited Feb. 8, 2022)
[96] Florida House of Representatives Committee on Insurance, *The Florida Patient's Compensation Fund: Status Report on Terminating Activities of the Fund*, at 17-18 (December 10, 1994).
[97] *Id*., at 1.
[98] Office of Insurance Regulation, *Target Market Conduct Final Examination Report of the Florida Patient's Compensation Fund*, April 25, 2014, at 4, https://www.floir.com/siteDocuments/FLPatientsCompensationFund04252014.pdf (last visited Jan. 30, 2022).

Hospitals licensed pursuant to ch. 395, F.S., are mandatory members unless they can demonstrate financial responsibility to pay claims and costs described in s. 766.105(2)(c), F.S. Other health care providers[99] such as physicians, osteopaths, and professional associations are allowed to participate in the Fund. To become members of the Fund, all licensed Florida hospitals and health care providers electing to enroll in the fund must pay an annual membership fee and any applicable assessments based upon past and prospective loss and expense experience; and prior claims experience of the members covered under the fund. Members receive coverage for claims arising from rendering or failure to render medical care or services resulting in injury or death to a patient. Health care providers choose between two coverage limits afforded by the Fund. Coverage may not exceed one million dollars per claim, three million dollars annual aggregate, or two million dollars per claim, four million dollars annual aggregate. Health care providers are responsible for paying claim amounts in excess of the selected limit and the Fund is not responsible for paying punitive damages that may be awarded to plaintiffs. Coverage limits afforded by the Fund to hospitals may not exceed two and one-half million dollars per claim and does not provide an annual aggregate.[100]

The OIR has supervisory authority over the Fund's Plan of Operation and any changes to the Plan of Operation, including repeal.[101]

The law requires the OIR to review any request for assessments of plan participants or refunds of plan participants, and further states the Fund is required to furnish audited financial reports annually, upon request, to any Fund participant and to the OIR and the Joint Legislative Auditing Committee.[102] The board may authorize refunds when revenues exceed known liabilities and expenses.[103] Excesses or unearned fees are refunded to members in proportion to the contributions made in accordance with procedures adopted by the board and approved by the OIR. The Fund has certified to the OIR twelve assessments, and the OIR has approved 11 refunds. [104] The last year the hospitals contributed member fees was in 1982; the last year the physician class contributed member fees was in 1983.[105] The last refund approved by the OIR was in March 2004.[106]

The Fund ceased to offer coverage effective July 1, 1983, because it failed to attain the necessary minimum membership levels to offer coverage.[107] The Fund purchased structured settlement annuities to fulfill the terms and conditions of settlement agreements with claimants in medical

[99] Section 766.105(1)(b), F.S.
[100] Section 766.105, F.S.
[101] Section 766.105(3)(c)2, F.S.
[102] Section 766.105(3)(e)4, F.S.
[103] Section 766.105(3), F.S.
[104] Office of Insurance Regulation, *Target Market Conduct Examination Report of the Florida Patient's Compensation Fund* (Apr. 25, 2014) https://www.floir.com/siteDocuments/FLPatientsCompensationFund04252014.pdf (last visited Feb. 8, 2022).
[105] *Id.*
[106] *Id.*
[107] Section 766.105(3)(h), F.S., provides at least seven days prior to the beginning of each fiscal year, the Florida's Patient Compensation Fund shall determine whether it will attain the minimum membership levels to offer coverage. The minimum membership thresholds are total membership fees of five million dollars for non-hospital health care provider members and $12.5 million for hospitals members.

malpractice cases.[108] According to the DFS, the Fund has represented that there are no open or active claims that are not being serviced through a structured settlement.[109]

In 2021, an actuarial report conducted for the Fund found the Fund retains an ownership interest in 15 annuities that have an aggregate future value of $12,680,687. In the event of an insurer insolvency, many of the annuities would be covered by Florida Life and Health Insurance Guaranty Association (FLHIGA); therefore the actuary concluded Fund's exposure to contingent liability is $2,403,590. About half of the remaining annuitants were children when their parents entered into structured settlements with the Fund; therefore, some of the remaining annuities may continue for another 40 years.[110]

As of December 2020, the Fund reported a reserve for unearned fees of $15,135,541, which includes $14,888,634 held in investment accounts.[111]

Operating costs have increased in recent years, because the board approved the general manager's request for an assistant in 2015 and approved four percent annual salary increases for the two Fund employees for 2017, 2018, 2019 and 2020.[112] The Fund contributes to an employee pension plan and pays for legal counsel, accounting and auditing, rent and utilities, travel, and insurance.[113]

The following comes from financial statements the Fund shared with its board and the OIR:

Year	2016	2017	2018	2019	2020
Salaries	$181,754	$213,668	$221,600	$229,764	$240,417
Pension Plan	$59,684	$52,303	$55,677	$54,424	$45,891
Rent, Utilities & Janitorial	$20,336	$16,704	$16,158	$16,758	$12,841
General Counsel	$3,500	$42,195	$36,992	$35,339	$37,065
Accounting and Auditing	$73,513	$58,294	$52,578	$52,821	$39,126
Travel & Expense (Staff)	$1,463	$4,087	$3,841	$1,962	$4,404
Travel & Expense (Board)	$7,125	$20,327	$17,627	$21,905	$22,751

[108] Florida House of Representatives Committee on Insurance, *The Florida Patient's Compensation Fund: Status Report on Terminating Activities of the Fund* (December 10, 1994). (On file with the Senate Committee on Banking and Insurance.
[109] Department of Financial Services, *2022 Legislative Bill Analysis of SB 1874* (January 18, 2022) (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).
[110] Jack Swisher, ACAS, MAAA, *Florida Patient's Compensation Fund Annuity Insolvency Analysis* (June 28, 2021) at 4-5; and Correspondence from David Yon, Esq., on behalf of the Florida Patient's Compensation Fund, to Jane Nelson of the Office of Insurance Regulation (Aug. 4, 2021).
[111] Carr Riggs & Ingram CPAs and Advisors, *Florida Patient's Compensation Fund Financial Statements* (Dec. 31, 2020) at 4.
[112] Memo to the Florida Patient's Compensation Fund Operating Committee from General Manager Charles Portrero, November 19, 2018.
[113] The Office of Insurance Regulation monitors meetings of the Florida Patient's Compensation Fund by telephone and receives copies of meeting materials the Fund provides to its Board of Governors. The OIR provided copies of meeting materials from 2011-2020 to the Florida House of Representatives, Insurance and Banking Subcommittee. House of Representatives *Staff Analysis CS/CS/HB 959* (January 28, 2022), available at https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=75756&SessionId=93 (last visited Feb. 3, 2022).

Division of State Group Insurance

The Division of State Group Insurance within the Department of Management Services administers the state group health insurance program (program) under a cafeteria plan consistent with s. 125 of the Internal Revenue Code for state employees.[114] Eligible Employees of the program include, state officers; state employees paid from "salaries and benefits" appropriation categories, regardless of the number of hours worked; retired state officers and state employees; surviving spouses of deceased state officers and state employees; certain terminated state officers and state employees; and certain state employees paid from "other-personal-services" appropriation categories.[115]

III. Effect of Proposed Changes:

Division of Accounting and Auditing

Sections 1 and 5-9 repeals s. 17.0315, and amends ss. 215.34, 215.93, 215.94, 216.102, and 218.32, respectively, relating to financial and cash management programs and local government financial reporting. Section 1 repeals s. 17.0315, F.S., relating to the Chief Financial Officer's (CFO) financial and cash management task force due to the creation of the Florida Planning, Accounting and Ledger Management (PALM) financial and cash management system and its executive steering committee. Section 6 eliminates the requirement for an agency to post journal entries since PALM records debit memorandums. Sections 7 and 8 remove the term, "cash management subsystem" and replaces it with the term, "financial management system." Section 9 replaces the term, "comprehensive annual financial report, with the term, "annual comprehensive financial report," to conform to a change in Governmental Accounting Standards Board (GASB) standards. Section 10 revises the local government reporting system to designate the Florida Open Government Financial Statement System as the primary location for governmental financial reporting.

Service of Process

Section 2 amends s. 48.151, F.S., relating to service on statutory agents, to clarify that the CFO is the agent for service of process on all insurers applying for authority to transact insurance and other specified entities licensed under the Florida Insurance Code. The section also requires the Department of Financial Services (DFS or department) to create a secure online portal as the sole means to accept service of process on the CFO under this section.

Section 23 amends s. 624.307, F.S., to require any regulated person or any unauthorized insurer under s. 626.906, F.S., to appoint the CFO as its agent to receive services of all legal process. Further, the CFO must make the process available through a secure online portal to the person designated by the regulated person or unauthorized insurer to receive the process. The notice must disclose the uniform resource locater (URL) where the process may be obtained.

Section 24 amends s. 624.422, F.S., relating to service of process, to require each licensed insurer to file with the DFS designation of the name and e-mail address of the person to whom

[114] Section 110.123, F.S.
[115] *Id.*

process against it served upon the CFO is to be made through the online portal. The online portal is the sole method for service of process.

Section 25 amends s. 624.423, F.S., to clarify that service of process is valid and binding upon the insurer on the date the process is served upon the CFO and is delivered to the insurer or the DFS has notified the insurer that such information has been made available upon a secured online portal.

Section 26 amends s. 624.610, F.S., relating to reinsurance, to provide conforming changes relating to service of process referencing s. 48.151(3), F.S., and to provide service to agents of insurers solely through the department's online portal.

Sections 52-54 amend ss. 626.906, 626.912, and 626.937, F.S., respectively, to provide conforming changes.

Division of Rehabilitation and Liquidation

Sections 3 and 4 amend ss. 110.123 and 110.131, F.S., respectively, to allow full-time and part-time employees, retired employees, and surviving spouses of employees of the Division of Rehabilitation and Liquidation to participate in the state group insurance program.

Division of Workers' Compensation

Section 11 amends s. 440.02, F.S., to revise the definition of the term, "employer," to include employment agencies and employment leasing companies that provide employees to other business entities or persons. Currently, the definition includes employment agencies, employee leasing companies, and similar agents who provide employees to other persons. The term, "similar agents," is an undefined term, and is removed.

Section 12 amends s. 440.05, F.S. relating to the election of exemption from workers' compensation insurance coverage requirements to provide the following changes:

- Requires an applicant for an exemption to provide a valid driver's license number or valid identification card number as a prerequisite for the DFS to process the application. Currently, the statute does not specify such documents must be valid;
- Eliminates the requirement for an applicant for an exemption from coverage to provide a social security number as a requirement for processing the application;
- Requires an applicant for a workers' compensation exemption to certify he or she has completed an online workers' compensation coverage and compliance tutorial developed by the DFS;
- Replaces the mandatory exemption and revocation of exemption notification requirement to carriers with a carrier opt-in via electronic notification process;
- Adds disclosures to the Certificate of Election to be Exempt that provide the exemption is not a license issued by the Department of Business and Professional Regulation (DBPR) and the DBPR's website has information that can be used to verify an exemption holder's licensure status;
- Eliminates a duplicative business records requirement for exemption holders in the construction industry; and

- Eliminates the scope of business or trade to disclosure on the notice of election to be exempt.

Section 13 amends s. 440.107, F.S., relating to the DFS' powers to enforce employer compliance with coverage requirements. The bill extends the deadline for an employer to submit business records to the DFS from 10 business days to 21 days before the DFS can take an administrative action. The section eliminates the requirement for the DFS to update the Stop-Work Order database on a daily basis. The bill also clarifies an employer must pay any outstanding assessed penalty prior to entering into a new payment agreement schedule with the DFS. In addition, the bill modifies the timeframe for an employer to enter into a payment agreement schedule with the DFS or pay the penalty in full from 28 days after the service of the stop work order to within 21 days after service of the first penalty assessment. For first time employers that do not comply with coverage requirements, the timeframe to calculate a penalty for an employer's penalty formula is reduced from a 24-month period to a 12-month period, thereby reducing the penalty. The 24-month period will remain for employers who were previously issued a stop-work order or materially or understated payroll. The section allows an employer who has not been issued a Stop-Work Order or an enforcement action an opportunity to reduce their penalty by 15 percent by completing and correctly answering 80 percent of the questions from an on-line workers' compensation coverage and compliance tutorial.

Sections 14 and 15 amend ss. 440.185 and 440.381, F.S., relating to employer and carrier reporting and carrier audits of employers, respectively. **Section 16** extends the amount of time an employer has to notify a carrier of an injury from three days to three business days and authorizes a carrier to send specified information to an injured worker or employer by e-mail as an option to regular mail. **Section 17** provides that a carrier must conduct a physical onsite audit of construction class employers with policies with an estimated annual premium of $10,000 or more. Currently, there is no minimum premium threshold for physical onsite audits.

Division of Funeral, Cemetery, and Consumer Services

Section 16 amends s. 497.277, F.S., to eliminate the fee cap of $50 for the transference of burial rights from the purchaser to another.

Section 17 amends s. 497.369, F.S., to revise the requirements for obtaining an embalmer's license in Florida. The changes would allow an applicant to obtain a reciprocal licensure in Florida if they held a valid license in another state and had engaged in the full-time licensed practice of embalming in that state for at least five years.

Section 18 amends s. 497.372, F.S., to revise the duties that only a licensed funeral director may perform. The changes will result in non-licensed individuals being able to handle more clerical responsibilities, including obtaining information from families for the filing of death certificates and setting a time for services. Further, the section removes the current period during which funeral directors must direct memorial services. As a result, a funeral director would be responsible for directing any memorial service arranged by the funeral establishment following burial or cremation, regardless of when the memorial service takes place.

Section 19 amends s. 497.374, F.S. to revise the requirements for a funeral director to obtain a reciprocal license by allowing individuals licensed in another state to obtain licensure in Florida

if they have a current license in that state and have practiced funeral directing for at least five years. As an alternative, a funeral directors may obtain a reciprocal license if the applicant has a diploma or certificate from an accredited program of mortuary science instead of an associate degree or higher, and meets other current requirements.

Division of State Fire Marshal

Section 20 amends s. 554.108, F.S., relating to boiler inspections, to clarify a boiler with an input of 200,000 British thermal units (Btu) per hour and above, up to an input of 400,000 Btu per hour, is exempt from inspection. However, such an exempt boiler, if manufactured after July 1, 2022, must be stamped with the American Society of Mechanical Engineers (ASME) code symbol. A requirement for ASME stamping of boilers between 200,000 and 400,000 Btu has been in the statute for several years but did not have a phase in date to allow for utilization of a manufacturer's inventory. The addition of the carbon monoxide detector requirements currently found in ch. 509, F.S., clarifies the authority of authorized third party inspectors to enforce this safety feature.

Section 21 amends s. 554.111, F.S., relating to fees, clarifies an additional amount equal to the certification inspection fees may be charged when it is necessary to make a special trip for testing and verification. In addition, this section requires an application for boiler permit to include the manufacturer's data report.

Section 22 amends s. 554.114, F.S., relating to prohibited acts and penalties, to revise compliance deadlines and penalties for an insurer authorized to sell boiler insurance that fails to inspect a boiler pursuant to the requirements of this section.

Division of Insurance Agents and Agencies

Section 27 amends s. 626.015, F.S., to relating to definitions. The definition of licensing authority is created to mean the department or the office.[116] The definition of unaffiliated appointment is revised to provide an exception to the current prohibition that an unaffiliated insurance agent may not be affiliated with an insurer, insurer-appointed insurance agent, or insurance agency contracted with or employing insurer-appointed insurance agents. This change would allow a licensed adjuster to obtain an adjuster appointment in order to adjust claims on behalf of an insurer while holding an unaffiliated appointment on an agent license.

Section 28 amends s. 626.171, F.S., relating to application for licensure, to provide the fingerprinting requirements in s. 624.34, F.S., apply to all applicants for licensure under ch. 626, F.S.

Section 29 amends s. 626.172, F.S., relating to insurance agency licensure, to clarify fingerprinting must be processed in accordance with the requirements of s. 626.171(4), F.S.

[116] In this instance department means Department of Financial Services and office refers to the Office of Insurance Regulation.

Section 30 creates s. 626.173, F.S., relating to insurance agency closure, to specify an insurance agency's responsibilities, when closing or ceasing to transact business for more than 30 days. Within 35 days after the agency first ceases to transact insurance, the agency owner or an officer listed on the original application for licensure must:

- Cancel the insurance agency's license by notifying the DFS by the submission of completed form prescribed by the DFS;
- Notify all insurers with whom the agency or agent in charge are appointed, that the agency operations have ceased, the date operations ceased, the identity of any agent or agency to whom the agency's current book of business has been transferred, and the method by which the agency records may be obtained during the time stipulated in sections 626.748 and 626.561, F.S.;
- Notify all policyholders currently insured by a policy written, produced, or serviced by the agency that the agency has ceased operations, the date the operations ceased and the identity of the agency or agent to whom the agency's current book of business was transferred. If no transfer has occurred, notification should direct the policyholder to contact the insurance company that will assist the policyholder in locating a licensed agent to service the policy;
- Notify all premium finance companies through which active policies are financed, that the agency has ceased operations, the date operations ceased and the identity of the agent or agency to whom the agency's current book of business has been transferred; and
- Ensure all funds held in a fiduciary capacity are distributed to the rightful owners.

The section provides that in a proceeding initiated pursuant to ch. 120, F.S., the DFS may, impose an administrative fine against the agent in charge or director or officer found in the proceeding to have violated any provision of this section. A proceeding may not be initiated and fine may not accrue until after the person has been notified in writing of the nature of the violation, has been afforded 10 business days to correct the violation, and has failed to do so. Fines imposed pursuant to this section may not exceed the amounts specified in s. 626.681, F.S., per violation. Further, the DFS may also suspend or revoke the license of a licensee fined pursuant to this section. The section provides factors for the DFS to consider when determining the appropriateness of the penalty.

Section 31 amends s. 626.201, F.S., relating to investigations of applicants by the DFS, provides that submission of an applicant's fingerprints must be in accordance with s. 626.171(4), F.S. Further, the section provides that the expiration, nonrenewal, or surrender of a license under ch. 626, F.S., does not eliminate jurisdiction of the licensing authority to investigate and prosecute for a violation committed by the licensee while licensed under ch. 626, F.S. Further, the section provides that notwithstanding the withdrawal of a complaint, the prosecution of any matter may be initiated or continued. According to the DFS, the expiration, nonrenewal, or surrender of a license jeopardizes the licensing authority of the DFS to continue to investigate or prosecute violations committed while an individual was licensed.[117]

Section 32 amends s. 626.202, F.S., relating to fingerprinting requirements, to require that the submission of fingerprints must be in accordance with s. 626.171(4), F.S.

[117] The Department of Financial Services (DFS), *2022 Legislative Bill Analysis of SB 1874* (January 18, 2022) (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

Section 33 amends s. 626.221, F.S., to exempt an all-lines adjuster applicant who holds a designation as a Certified All Lines Adjuster (CALA) from Kaplan Financial Education from the statutory examination requirements.

Section 34 amends s. 626.311, F.S., to provide a licensed adjuster may obtain an adjuster appointment in order to adjust claims on behalf of an insurer while holding an unaffiliated appointment on an agent license and may adjust claims and receive compensation as authorized.

Section 35 amends s. 626.321, F.S., to provide a conforming change regarding fingerprint requirements in s. 626.171(4), F.S.

Section 36 amends s. 626.601, F.S., to provide conforming amendment regarding fingerprint requirements provided in s. 626.171(4), F.S.

Section 37 amends s. 626.7845, F.S., to provide technical conforming cross reference.

Section 38 amends s. 626.8411, F.S., relating to application provisions applicable to general lines agents or agencies, to require compliance with fingerprint requirements in s. 626.172(2)(f), F.S. Subsection (2) of the section is amended to clarify that paragraph (2)(f) of s. 626.172, F.S., applies to the agent in full charge.

Section 39 amends s. 626.8412, F.S., to clarify that in addition to the agent, the insurance agency must also hold an appointment issued by an insurer in order to sell a title insurance policy.

Section 40 amends s. 626.8417, F.S., to allow an applicant for a title insurance license to fulfill the 40-hour course requirement in person or online by removing the requirement that it be a classroom course.

Section 41 amends s. 626.8421, F.S., to specify a title agent and a title agency must have a separate appointment as to each insurer by which they are appointed as agents.

Section 42 amends s. 626.843, F.S., relating to the renewal, continuation, reinstatement, or termination of a title insurance agent's or title agency's appointment, to require a title insurance agency to be appointed, as prescribed by section 624.501, F.S., until suspended, revoked, or otherwise terminated. Further, the section requires that title insurance agency appointments must be renewed pursuant to s. 626.381, F.S.

Section 43 amends s. 626.8433, F.S., relating to termination of appointments, to subject title insurance agencies to reporting terminations to the DFS.

Section 44 amends s. 626.8447, F.S., relating to effect of suspension or revocation upon other licensees and appointees, to subject title insurance agencies to the same provisions.

Section 45 amends s. 626.854, F.S., to prohibit compensation of a public adjuster being based on amounts attributable to additional living expenses, unless the insured agrees to a separate agreement with a prescribed disclosure. In addition, the section provides compensation of a public adjuster must be based on the recovery allocated to the insured for covered damages,

exclusive of attorney fees and costs. The bill also prohibits increasing public adjuster compensation based on a claim being resolved by litigation.

Section 46 amends s. 626.8561, F.S, relating to the definition of the term, "public adjuster apprentice," to allow an adjusting firm to appoint, employ, or contract with a public adjuster apprentice. Currently, a public adjuster may only appoint an apprentice.

Section 47 amends s. 626.865, F.S., relating to public adjuster qualifications, to provide that a nonresident public adjuster who has been licensed and appointed on a continual basis for the previous six months to the list of licensed categories considered qualified for the public adjuster license. The section also requires that the $50,000 bond required as a condition for licensure must remain in effect for one year after the expiration or termination of the license.

Section 48 amends s. 626.8651, F.S., relating to public adjuster apprentice appointment and qualifications, to require only a public adjusting firm that has a designated primary adjuster, as required in s. 626.8695, F.S., to appoint the public adjuster apprentice, while eliminating a public all-lines adjuster's ability to appoint a public adjuster apprentice.

Further, this section requires an all lines adjuster to maintain bond coverage throughout existence of the license and for one full year after expiration or termination of the license.

Section 49 amends s. 626.8696, F.S., relating to requirements of an application for an adjusting firm license, to require the name and license number of the designated primary adjuster for each adjusting firm location as required in s. 626.8695, F.S. Further, fingerprints of each individual to be disclosed in the application (each majority owner, partner, officer, and director of the adjusting firm) must be filed with the DFS in accordance with s. 626.171(4), F.S., unless an individual is currently licensed and appointed under ch. 626, F.S. Only one of the individuals required to be listed on the application must sign the application. Currently, each owner of the firm must sign the application.

Section 50 amends s. 626.8732, F.S., relating to bond requirements for a nonresident public adjuster, to provide that the mandated bond must be maintained unimpaired throughout the existence of the license and for a period of one year following the expiration or termination of the license.

Section 51 amends s. 626.8734, F.S., relating to nonresident all-lines adjuster license qualifications, to revise the fingerprinting requirements in accordance with s. 626.17(4), F.S.

Section 55 amends s. 626.9953, F.S., relating to qualifications for registration, to provide conforming fingerprinting requirements.

Division of State Fire Marshal

Section 56 amends s. 633.135, F.S, relating to the Firefighter Assistance Grant Program, to expand the list of purchases eligible for the grant program to include:

- Other equipment and tools that improve fire safety and fire rescue capabilities for firefighters; and

- Protective clothing and equipment compliant with NFPA 1977, "Standard on Protective Clothing Equipment for Wildland Fire Fighting and Urban Interface Fire Fighting."

Section 57 amends s. 633.216, F.S., relating to inspections of buildings and equipment; training and certification requirements, to eliminate the requirement a previously certified fire safety inspector with a lapsed certification that has lapsed for eight years or more to repeat the fire safety inspector training required by the Division of State Fire Marshal. Current law requires a certificate is valid for four years and renewal is contingent upon the completion of continuing education. An exception allowing a licensee to successfully pass the examination in lieu of the training is deleted.

Section 58 amends s. 633.408, F.S., relating to training and certification, to authorize the Division of Fire Marshal to establish the requirements of the minimum standards course by rule. The section also provides technical changes.

Section 59 amends s. 633.414, F.S., relating to retention of firefighter and volunteer firefighter certifications, to provide that the renewal requirements for the special certificate of compliance is the same as a firefighter certificate of compliance. The bill also changes the definition of an active firefighter.

Section 60 amends s. 648.34, F.S., relating to qualification of bail bond agents, to revise the fingerprinting process to be in accordance with s. 626.171(4), F.S.

Section 61 amends s. 648.355, F.S., relating to temporary limited license as limited surety agent or professional bail bond agent, to revise fingerprinting requirements to conform to s. 626.171(4), F.S.

Section 62 amends s. 648.46, F.S., relating to disciplinary action against bail bond licensees, to provide the expiration, nonrenewal, or surrender of licensure under ch. 648, F.S., does not eliminate the jurisdiction of the licensing authority to investigate and prosecute for a violation committed by a licensee while licensed under this chapter. Notwithstanding the withdrawal of a complaint, the prosecution of any matter may be initiated or continued.

Florida Patient Compensation Fund

Section 63 amends s. 766.105, F.S., relating to the Florida Patient's Compensation Fund (fund), to revise operations and duties of the board of governors of the fund and the Agency for Health Care Administration (agency) relating to financial responsibility or coverage requirements and certification of such coverage. The section provides that the agency would receive and review the documents and determine compliance. The supervision of the fund is transferred from the board of governors to the Chief Financial Officer or his or her designee.

Currently, the agency must review documentation submitted by hospitals demonstrating financial responsibility to pay claims and costs arising out of the rendering or failure to render medical services and for bodily injury or property damage to a person or property arising out of the activities of the hospital, as provided in s. 766.105(2), F.S. Once the agency completes the review, the agency delivers the documents to the board of governors. At least 60 days prior to the

issuance or renewal of a hospital's license, the agency must request that the board of governors certify that each hospital complies with coverage requirements. Currently, the board of governors of the Fund are responsible for the supervision and operation of the fund.

The section provides that the fund must operate subject to the supervision of the CFO or his or her designee, subject to the policies and procedures and under the auspices of the Division of Rehabilitation and Liquidation within the DFS until the DFS executes a legal dissolution of the fund on or before December 31, 2023. Prior to the legal dissolution of the fund, DFS must:

- Obtain all existing records and retain necessary records of the fund pursuant to law;
- Identify all remaining property held by the fund and attempt to return such property to its owners and, for property that cannot be returned to the owner, transfer such property to the Division of Unclaimed Property within the DFS;
- Make a final accounting of the finances of the fund;
- Ensure that the fund has met all its obligations pursuant to structured settlements, annuities, or other instruments established to pay covered claims, and, if the fund has not done so, attempt to meet such obligations before final and complete dissolution of the fund;
- Sell or otherwise dispose of all physical assets of the fund;
- Execute a legal dissolution of the fund; and
- Transfer any remaining money or assets of the fund to the CFO for deposit in the General Revenue Fund.

The section also provides s. 766.105, F.S., is repealed effective January 1, 2024, thereby terminating the Florida Patient's Compensation Fund.

Section 10 creates ss. 395.1061 and **section 64 and 65** amend s. 945.6041, F.S., and 985.6441, F.S., respectively, to provide conforming changes relating to the repeal of s. 766.105, F.S., and transferring a provision relating to health care providers and their financial responsibility in complying with professional liability requirements. The provision is being transferred to s. 395.1061, F.S., because the bill repeals the current provision in s. 766.105, F.S., effective January 1, 2024.

Section 66 provides that, except as otherwise expressly provided in this act, this act 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:

The bill eliminates the current maximum fee of $50 to consumers for the transference of burial rights.

Reducing the penalty calculation period and increasing credits for businesses that fail to comply with the workers' compensation law, so long as the business has not previously failed to provide workers' compensation coverage for its employees, should reduce the cost of non-compliance for small businesses, particularly those in the construction industry.

Permitting carriers to conduct offsite payroll audits by mail, rather than in person, for employers in the construction industry that have an estimated annual workers' compensation premium of less than $10,000 could result in modest cost savings for insurance carriers, that potentially could be passed through to employers.

Permitting unaffiliated insurance agents to adjust claims, so long as the agent is also a licensed adjuster, could create employment opportunities for persons who hold both licenses and increase the pool of adjusters who can respond in the aftermath of a large storm or catastrophic event.

Terminating the Florida Patient's Compensation Fund (fund) could result in refunds to doctors and hospitals that were members of the fund in the late 1970s and early 1980s.

C. Government Sector Impact:

The bill may have insignificant but indeterminate impact on state revenues and expenditures.

Service of Process

The Department of Financial Services (DFS) is required to create a secure online portal as the sole means to accept service of process on the CFO under **Section 2** and **Sections 23-26**. The current online portal will meet this requirement. The DFS has

indicated any information technology impact can be absorbed within existing resources.[118]

Workers' Compensation Insurance

The implementation of CS/SB 1874 will reduce penalties imposed on employers that do not comply with the workers' compensation insurance coverage requirements. The fiscal impact is unknown.

Firefighter Cancer Assistance Grant

The changes made to the Firefighter Assistance Grant program will allow the program to fund additional necessary tools and equipment to firefighters.

Florida Patients' Compensation Fund

Terminating the Florida Patient's Compensation Fund could result in refunds to doctors and hospitals that were members of the Fund in the late 1970s and early 1980s. In addition, the bill allows for the transfer of any remaining money or assets, after all obligations have been met, to be deposited in the General Revenue Fund.

VI. Technical Deficiencies:

Section 8 amends local governmental entities annual financial reports. The Chief Financial Officer required all work product on the Florida Open Financial Statement System to be completed by December 31, 2021, including the recruitment and selection of contractors to build the eXtensible Business Reporting Language (XBRL) taxonomies and software tools. The section may need to be updated to reflect and conform to the completion of such deadlines.

Section 27 creates a definition for the term, "licensing authority." The term means the respective jurisdiction of the department or the office, as provided by law. **Sections 31 and 61** of the bill amends s. 626.201, F.S., and uses the term, "licensing authority." Other existing provisions in the Florida Insurance Code use the term, "department or office." Currently, the term licensing authority is used in ss. 626.8732 and 626.8734, F.S., in the context of a licensing authority of another state. The replacement of the term, "licensing authority," with "department or office" in **Sections 31 and 63**, and the removal of the definition of "licensing authority" in **Section 27** would provide greater clarity and consistency with the use of the term, "licensing authority," in current law.

VII. Related Issues:

None.

[118] The Department of Financial Services (DFS), *2022 Legislative Bill Analysis of SB 1874* (January 18, 2022) (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 48.151, 110.123, 110.131, 215.34, 215.93, 215.94, 216.102, 218.32, 440.02, 440.05, 440.107, 440.185, 440.381, 497.277, 497.369, 497.372, 497.374, 554.108, 554.111, 554.114, 624.307, 624.422, 624.423, 624.610, 626.015, 626.171, 626.172, 626.201, 626.202, 626.221, 626.311, 626.321, 626.601, 626.7845, 626.8411, 626.8412, 626.8417, 626.8421, 626.843, 626.8433, 626.8447, 626.854, 626.8561, 626.865, 626.8651, 626.8696, 626.8732, 626.8734, 626.906, 626.912, 626.937, 626.9953, 633.135, 633.216, 633.408, 633.414, 648.34, 648.355, 648.46, 766.105, 945.6041, and 985.6441.

This bill creates the following sections of the Florida Statutes: 395.1061 and 626.173.

This bill repeals section 17.035 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 Appropriations on February 28, 2022:

The committee substitute:

- Retains the Stop Inmate Fraud Program within the Department of Financial Services (DFS);
- Removes the exemption of maximum reimbursement allowances schedule from the rule ratification requirements;
- Removes requirements relating to maximum reimbursement allowances for medical services when there is no agreed upon price; and Removes authority of the DFS to adopt rules to determine schedules of maximum reimbursement allowances.

CS by Banking and Insurance on January 25, 2022:

- Revises compensation for public adjuster by requiring that the compensation must be based on the recovery allocated to the insured for covered damage, exclusive of attorney fee and costs.
- Revises service of process requirements and provides conforming changes relating to service of process.
- Transfers responsibilities of the Florida Patient's Compensation Fund relating to hospitals demonstrating financial responsibility for maintaining professional liability coverage to the Agency for Health Care Administration.
- Revising requirements for closing an insurance agency.
- Provides technical changes.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Boyd

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A bill to be entitled

An act relating to the Department of Financial Services; repealing s. 17.0315, F.S., relating to the financial and cash management system and task force; amending s. 48.151, F.S.; providing an exception to service of process on public entities under certain circumstances; deleting the Chief Financial Officer's assistant or deputy or another person in charge of the office as agents for service of process on insurers; requiring the Department of Financial Services to create a secure online portal as the sole means to accept certain service of process; amending s. 110.123, F.S.; revising definitions; authorizing specified persons relating to the Division of Rehabilitation and Liquidation to purchase coverage in a state group health insurance plan at specified premium costs; providing that the enrollment period for the state group insurance program begins with a specified plan year for certain persons relating to the division; amending s. 110.131, F.S.; conforming a cross-reference; amending s. 120.541, F.S.; revising applicability of certain provisions relating to a specified proposed rule; amending s. 215.34, F.S.; deleting the requirement for specified entities receiving certain charged-back items to prepare a journal transfer; amending s. 215.93, F.S.; renaming a subsystem of the Florida Financial Management Information System; amending s. 215.94, F.S.; conforming a provision to changes made by the act;

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amending s. 216.102, F.S.; making technical changes; amending s. 218.32, F.S.; revising legislative intent; providing functions of the Florida Open Financial Statement System; requiring local governments to use the system to file specified reports; providing requirements for the system; revising the list of entities with which the Chief Financial Officer may consult with regard to the system; authorizing, rather than requiring, certain local governmental financial statements to be filed in a specified format; deleting certain requirements for such statements; providing construction; providing an exception; creating s. 395.1061, F.S.; defining terms; requiring certain hospitals to demonstrate financial responsibility for maintaining professional liability coverage; specifying requirements for such financial responsibility; requiring hospitals to provide evidence of compliance and to remain in compliance; prohibiting the Agency for Health Care Administration from issuing or renewing licenses of hospitals under certain circumstances; providing exemptions from professional liability coverage requirements; authorizing hospital systems to meet such professional liability coverage requirements in a specified manner; amending s. 414.40, F.S.; transferring the Stop Inmate Fraud Program from the Department of Financial Services to the Department of Economic Opportunity; authorizing the program to provide reports of certain data to the Division of Public Assistance Fraud for a

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specified purpose; amending s. 440.02, F.S.; revising the definition of the term "employer"; amending s. 440.05, F.S.; revising information that must be submitted with the notice of election to be exempt from workers' compensation coverage; specifying the circumstances under which the Department of Financial Services is required to send certain notifications to workers' compensation carriers; requiring such notifications to be electronic; requiring certificates of election to be exempt to contain a specified notice; deleting a provision requiring certain corporation officers to maintain business records; revising applicability of certificates of election to be exempt; amending s. 440.107, F.S.; revising the timeframe for certain employers to produce specified records under certain circumstances; prohibiting employers who failed to secure payment of workers' compensation from entering a payment agreement schedule with the department unless a specified condition is met; revising circumstances that result in immediate reinstatement of stop-work orders; revising penalty assessments; amending s. 440.13, F.S.; revising statewide schedules of maximum reimbursement allowances for medically necessary treatment, care, and attendance; authorizing the department to adopt rules; amending s. 440.185, F.S.; revising the timeline and methods for workers' compensation carriers to send a certain informational brochure to injured workers; revising methods by which

such informational brochure is sent to employers; amending s. 440.381, F.S.; specifying workers' compensation policies that require physical onsite audits for a specified class; amending s. 497.277, F.S.; deleting a cap on transferring burial rights fees; amending s. 497.369, F.S.; revising requirements for licenses by endorsement to practice embalming; amending s. 497.372, F.S.; revising the scope of funeral directing practice; amending s. 497.374, F.S.; revising requirements for licenses by endorsement to practice funeral directing; amending s. 554.108, F.S.; requiring boilers manufactured after a specified date, rather than boilers of certain heat input, to be stamped with a specified code symbol; revising the boilers' information that must be filed; requiring that specified spaces and rooms be equipped with carbon monoxide detector devices; amending s. 554.111, F.S.; deleting a requirement for a specified fee for a certificate of competency; requiring applications for boiler permits to include a specified report; revising the purpose for special trips that the department is required to make for boiler inspections; amending s. 554.114, F.S.; revising the schedules of penalties against boiler insurance companies, inspection agencies, and other persons for specified violations; amending s. 624.307, F.S.; providing that certain regulated persons or unauthorized insurers are required to appoint the Chief Financial Officer as their agents, rather than as their attorneys, to

receive service of legal process; revising the method by which the Chief Financial Officer makes the process available; requiring the Chief Financial Officer to promptly send notice of receipt of service of process; revising requirements for the contents of such notice; amending s. 624.422, F.S.; requiring insurers to file with the department e-mail addresses, rather than addresses, of specified persons; providing that a specified method by which process is served upon the Chief Financial Officer is the sole method of service; conforming provisions to changes made by the act; amending s. 624.423, F.S.; revising procedures for service of process; requiring the Chief Financial Officer to promptly notify certain persons of the process and to make the process available to such persons through specified means; revising the method by which records are retained; amending s. 624.610, F.S.; conforming provisions to changes made by the act; amending s. 626.015, F.S.; defining the term "licensing authority"; revising the definition of the term "unaffiliated insurance agent"; amending s. 626.171, F.S.; requiring fingerprints for certain licenses to be processed in accordance with specified laws; amending s. 626.172, F.S.; revising the method by which fingerprints for applications for insurance agency licenses are submitted; deleting a fingerprint processing fee; creating s. 626.173, F.S.; providing duties for certain insurance agency persons within a specified timeframe after cessation of insurance

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transactions; authorizing the department to impose administrative fines against such persons for specified violations; prohibiting the initiation of certain proceedings and imposition of fines until specified prerequisites are completed; providing a cap on such fines; authorizing the department to suspend or revoke licenses under certain circumstances; providing requirements for determining penalties and remedies; amending s. 626.201, F.S.; conforming a provision to changes made by the act; providing continuation of jurisdiction of the licensing authority to investigate and prosecute specified violations under certain circumstances; amending s. 626.202, F.S.; conforming provisions to changes made by the act; amending s. 626.221, F.S.; adding a designation to the list of designations that allow applicants for an all-lines adjuster license to be exempt from an examination; amending s. 626.311, F.S.; providing an exception to the prohibition against unaffiliated insurance agents holding appointments from insurers; authorizing certain adjusters to obtain adjuster appointments while maintaining unaffiliated insurance agent appointments and to adjust claims and receive certain compensation; amending ss. 626.321 and 626.601, F.S.; conforming provisions to changes made by the act; amending s. 626.7845, F.S.; conforming a cross-reference; amending ss. 626.8411 and 626.8412, F.S.; conforming provisions to changes made by the act; amending s. 626.8417, F.S.; revising requirements

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to qualify for title insurance agent licenses; amending s. 626.8421, F.S.; requiring title agencies to have separate appointments under certain circumstances; amending s. 626.843, F.S.; providing requirements for appointments of title insurance agencies; amending s. 626.8433, F.S.; requiring title insurers that terminate appointments of title insurance agencies to file certain information with the department; amending s. 626.8447, F.S.; providing effects of suspension or revocation of title insurance agency licenses; amending s. 626.854, F.S.; revising and providing restrictions on public adjuster compensation; providing exceptions to such restrictions; amending s. 626.8561, F.S.; revising the definition of the term "public adjuster apprentice"; amending s. 626.865, F.S.; revising requirements to qualify for public adjuster licenses; requiring that certain bonds remain in effect for a specified period after expiration of the license; amending s. 626.8651, F.S.; requiring that certain bonds remain in effect for a specified period after expiration of a public adjuster apprentice license; revising requirements for public adjuster apprentices to be, act as, or hold themselves out to be public adjuster apprentices; amending s. 626.8696, F.S.; revising requirements for adjusting firm license applications; amending s. 626.8732, F.S.; requiring applicants for nonresident public adjuster licenses to maintain certain bonds after the expiration or termination of licenses;

amending ss. 626.8734, 626.906, 626.912, 626.937, and 626.9953, F.S.; conforming provisions to changes made by the act; amending s. 633.135, F.S.; providing additional uses for firefighter funds; amending s. 633.216, F.S.; revising requirements for renewal of firesafety inspector certificates; amending s. 633.408, F.S.; revising requirements for the issuance of a Firefighter Certificate of Compliance and Special Certificate of Compliance; deleting provisions relating to requirements to retain a Special Certificate of Compliance; amending s. 633.414, F.S.; providing requirements to retain a Special Certificate of Compliance; revising requirements to retain a Firefighter Certificate of Compliance; redefining the term "active"; amending ss. 648.34 and 648.355, F.S.; conforming provisions to changes made by the act; amending s. 648.46, F.S.; providing continuation of jurisdiction of the licensing authority to investigate and prosecute specified violations under certain circumstances; amending s. 766.105, F.S.; deleting requirements and procedures for the certification of hospital compliance with the Florida Patient's Compensation Fund; providing that the fund is subject to the supervision and approval of the Chief Financial Officer or his or her designee, rather than the board of governors; conforming provisions to changes made by the act; providing for supervision of the fund until dissolution; specifying duties of the Department of Financial Services before dissolution of the fund;

providing for future repeal; amending ss. 945.6041 and 985.6441, F.S.; revising the definition of the term "health care provider"; defining the term "other medical facility"; transferring the Stop Inmate Fraud Program within the Department of Financial Services to the Department of Economic Opportunity by a type two transfer; providing effective dates.

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

Section 1. Section 17.0315, Florida Statutes, is repealed.

Section 2. Subsections (1) and (3) of section 48.151, Florida Statutes, are amended to read:

48.151 Service on statutory agents for certain persons.—

(1) When any law designates a public officer, board, agency, or commission as the agent for service of process on any person, firm, or corporation, service of process thereunder shall be made by leaving one copy of the process with the public officer, board, agency, or commission or in the office thereof, or by mailing one copy to the public officer, board, agency, or commission, except as provided in subsection (3). The public officer, board, agency, or commission so served shall retain a record copy and promptly send the copy served, by registered or certified mail, to the person to be served as shown by his or her or its records. Proof of service on the public officer, board, agency, or commission shall be by a notice accepting the process which shall be issued by the public officer, board, agency, or commission promptly after service and filed in the court issuing the process. The notice accepting service shall

state the date upon which the copy of the process was mailed by the public officer, board, agency, or commission to the person being served and the time for pleading prescribed by the rules of procedure shall run from this date. The service is valid service for all purposes on the person for whom the public officer, board, agency, or commission is statutory agent for service of process.

(3) The Chief Financial Officer ~~or his or her assistant or deputy or another person in charge of the office~~ is the agent for service of process on all insurers applying for authority to transact insurance in this state, all licensed nonresident insurance agents, all nonresident disability insurance agents licensed pursuant to s. 626.835, any unauthorized insurer under s. 626.906 or s. 626.937, domestic reciprocal insurers, fraternal benefit societies under chapter 632, warranty associations under chapter 634, prepaid limited health service organizations under chapter 636, and persons required to file statements under s. 628.461. ~~As an alternative to service of process made by mail or personal service on the Chief Financial Officer, on his or her assistant or deputy, or on another person in charge of the office,~~ The Department of Financial Services shall ~~may~~ create a secure online portal as the sole means ~~an Internet-based transmission system~~ to accept service of process on the Chief Financial Officer under this section ~~by electronic transmission of documents~~.

Section 3. Present subsections (9) through (13) of section 110.123, Florida Statutes, are redesignated as subsections (10) through (14), respectively, a new subsection (9) is added to that section, and paragraphs (b), (c), (f), (h), (i), and (o) of

subsection (2) and paragraph (i) of subsection (5) are amended, to read:

110.123 State group insurance program.—

(2) DEFINITIONS.—As used in ss. 110.123-110.1239, the term:

(b) "Enrollee" means all state officers and employees, retired state officers and employees, surviving spouses of deceased state officers and employees, and terminated employees or individuals with continuation coverage who are enrolled in an insurance plan offered by the state group insurance program. The term ~~"Enrollee"~~ includes all state university officers and employees, retired state university officers and employees, surviving spouses of deceased state university officers and employees, and terminated state university employees or individuals with continuation coverage who are enrolled in an insurance plan offered by the state group insurance program. As used in this paragraph, state employees and retired state employees also include employees and retired employees of the Division of Rehabilitation and Liquidation.

(c) "Full-time state employees" means employees of all branches or agencies of state government holding salaried positions who are paid by state warrant or from agency funds and who work or are expected to work an average of at least 30 ~~or more~~ hours per week; employees of the Division of Rehabilitation and Liquidation who work or are expected to work an average of at least 30 hours per week; employees paid from regular salary appropriations for 8 months' employment, including university personnel on academic contracts; and employees paid from other-personal-services (OPS) funds as described in subparagraphs 1. and 2. The term includes all full-time employees of the state

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universities. The term does not include seasonal workers who are paid from OPS funds.

1. For persons hired before April 1, 2013, the term includes any person paid from OPS funds who:

a. Has worked an average of at least 30 hours or more per week during the initial measurement period from April 1, 2013, through September 30, 2013; or

b. Has worked an average of at least 30 hours or more per week during a subsequent measurement period.

2. For persons hired after April 1, 2013, the term includes any person paid from OPS funds who:

a. Is reasonably expected to work an average of at least 30 hours or more per week; or

b. Has worked an average of at least 30 hours or more per week during the person's measurement period.

(f) "Part-time state employee" means an employee of any branch or agency of state government paid by state warrant from salary appropriations or from agency funds, or an employee of the Division of Rehabilitation and Liquidation, ~~and~~ who is employed for less than an average of 30 hours per week or, if on academic contract or seasonal or other type of employment which is less than year-round, is employed for less than 8 months during any 12-month period, but does not include a person paid from other-personal-services (OPS) funds. The term includes all part-time employees of the state universities.

(h) "Retired state officer or employee" or "retiree" means any state or state university officer or employee, or, beginning with the 2023 plan year, an employee of the Division of Rehabilitation and Liquidation, who retires under a state

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retirement system or a state optional annuity or retirement program or is placed on disability retirement, and who was insured under the state group insurance program or the Division of Rehabilitation and Liquidation's group insurance program at the time of retirement, and who begins receiving retirement benefits immediately after retirement from state or state university office or employment. The term also includes any state officer or state employee who retires under the Florida Retirement System Investment Plan established under part II of chapter 121 if he or she:

1. Meets the age and service requirements to qualify for normal retirement as set forth in s. 121.021(29); or

2. Has attained the age specified by s. 72(t)(2)(A)(i) of the Internal Revenue Code and has 6 years of creditable service.

(i) "State agency" or "agency" means any branch, department, or agency of state government. "State agency" or "agency" includes any state university and the Division of Rehabilitation and Liquidation for purposes of this section only.

(o) "Surviving spouse" means the widow or widower of a deceased state officer, full-time state employee, part-time state employee, or retiree if such widow or widower was covered as a dependent under the state group health insurance plan, TRICARE supplemental insurance plan, ~~or~~ a health maintenance organization plan established pursuant to this section, or the Division of Rehabilitation and Liquidation's group insurance program at the time of the death of the deceased officer, employee, or retiree. "Surviving spouse" also means any widow or widower who is receiving or eligible to receive a monthly state

warrant from a state retirement system as the beneficiary of a state officer, full-time state employee, or retiree who died prior to July 1, 1979. For the purposes of this section, any such widow or widower shall cease to be a surviving spouse upon his or her remarriage.

(5) DEPARTMENT POWERS AND DUTIES.—The department is responsible for the administration of the state group insurance program. The department shall initiate and supervise the program as established by this section and shall adopt such rules as are necessary to perform its responsibilities. To implement this program, the department shall, with prior approval by the Legislature:

(i) Contract with a single custodian to provide services necessary to implement and administer the health savings accounts authorized in subsection (13) ~~(12)~~.

Final decisions concerning enrollment, the existence of coverage, or covered benefits under the state group insurance program shall not be delegated or deemed to have been delegated by the department.

(9) COVERAGE AND ENROLLMENT PERIOD FOR EMPLOYEES, RETIREES, AND WIDOWS AND WIDOWERS OF EMPLOYEES AND RETIREES OF THE DIVISION OF REHABILITATION AND LIQUIDATION.—

(a) Beginning with the 2023 plan year:

1. A retired employee insured under the Division of Rehabilitation and Liquidation's group insurance program, or a widow or widower of an employee or of a retired employee of the Division of Rehabilitation and Liquidation who is covered as a dependent under the Division of Rehabilitation and Liquidation's

group insurance program, may purchase coverage in a state group health insurance plan at the same premium cost as that for a retiree or a surviving spouse, respectively, enrolled in the state group insurance program.

2. A terminated employee of the Division of Rehabilitation and Liquidation or an individual with continuation coverage who is insured under the Division of Rehabilitation and Liquidation's group insurance program may purchase coverage in a state group health insurance plan at the same premium cost as that for a terminated employee or an individual with continuation coverage, respectively, enrolled in the state group insurance program.

(b) The enrollment period for the state group insurance program begins with the 2023 plan year for:

1. Current and retired employees of the Division of Rehabilitation and Liquidation.

2. Widows and widowers of employees and of retired employees of the Division of Rehabilitation and Liquidation.

3. Terminated employees of the Division of Rehabilitation and Liquidation or individuals with continuation coverage who are insured under the Division of Rehabilitation and Liquidation's group insurance program.

Section 4. Subsection (5) of section 110.131, Florida Statutes, is amended to read:

110.131 Other-personal-services employment.—

(5) Beginning January 1, 2014, an other-personal-services (OPS) employee who has worked an average of at least 30 or more hours per week during the measurement period described in s. 110.123(14)(c) or (d) ~~s. 110.123(13)(c) or (d)~~, or who is

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reasonably expected to work an average of at least 30 or more hours per week following his or her employment, is eligible to participate in the state group insurance program as provided under s. 110.123.

Section 5. Paragraph (d) is added to subsection (4) of section 120.541, Florida Statutes, and paragraph (a) of subsection (2) and subsection (3) of that section are republished, to read:

120.541 Statement of estimated regulatory costs.—

(2) A statement of estimated regulatory costs shall include:

(a) An economic analysis showing whether the rule directly or indirectly:

1. Is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within 5 years after the implementation of the rule;

2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within 5 years after the implementation of the rule; or

3. Is likely to increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

(3) If the adverse impact or regulatory costs of the rule exceed any of the criteria established in paragraph (2)(a), the rule shall be submitted to the President of the Senate and

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Speaker of the House of Representatives no later than 30 days prior to the next regular legislative session, and the rule may not take effect until it is ratified by the Legislature.

(4) Subsection (3) does not apply to the adoption of:

(d) Schedules of maximum reimbursement allowances by the three-member panel which are expressly authorized by s. 440.13.

Section 6. Subsection (1) of section 215.34, Florida Statutes, is amended to read:

215.34 State funds; noncollectible items; procedure.—

(1) Any check, draft, or other order for the payment of money in payment of any licenses, fees, taxes, commissions, or charges of any sort authorized to be made under the laws of the state and deposited in the State Treasury as provided herein, which may be returned for any reason by the bank or other payor upon which same shall have been drawn shall be forthwith returned by the Chief Financial Officer for collection to the state officer, the state agency, or the entity of the judicial branch making the deposit. In such case, the Chief Financial Officer may issue a debit memorandum charging an account of the agency, officer, or entity of the judicial branch which originally received the payment. The original of the debit memorandum shall state the reason for the return of the check, draft, or other order and shall accompany the item being returned to the officer, agency, or entity of the judicial branch being charged. The officer, agency, or entity of the judicial branch receiving the charged-back item shall ~~prepare a journal transfer which shall~~ debit the charge against the fund or account to which the same shall have been originally credited. Such procedure for handling noncollectible items shall

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not be construed as paying funds out of the State Treasury without an appropriation, but shall be considered as an administrative procedure for the efficient handling of state records and accounts.

Section 7. Paragraph (c) of subsection (1) of section 215.93, Florida Statutes, is amended to read:

215.93 Florida Financial Management Information System.—

(1) To provide the information necessary to carry out the intent of the Legislature, there shall be a Florida Financial Management Information System. The Florida Financial Management Information System shall be fully implemented and shall be upgraded as necessary to ensure the efficient operation of an integrated financial management information system and to provide necessary information for the effective operation of state government. Upon the recommendation of the coordinating council and approval of the board, the Florida Financial Management Information System may require data from any state agency information system or information subsystem or may request data from any judicial branch information system or information subsystem that the coordinating council and board have determined to have statewide financial management significance. Each functional owner information subsystem within the Florida Financial Management Information System shall be developed in such a fashion as to allow for timely, positive, preplanned, and prescribed data transfers between the Florida Financial Management Information System functional owner information subsystems and from other information systems. The principal unit of the system shall be the functional owner information subsystem, and the system shall include, but shall

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not be limited to, the following:

(c) Financial ~~Cash~~ Management Subsystem.

Section 8. Subsection (3) of section 215.94, Florida Statutes, is amended to read:

215.94 Designation, duties, and responsibilities of functional owners.—

(3) The Chief Financial Officer shall be the functional owner of the Financial ~~Cash~~ Management Subsystem. The Chief Financial Officer shall design, implement, and operate the subsystem in accordance with the provisions of ss. 215.90-215.96. The subsystem shall include, but shall not be limited to, functions for:

(a) Recording and reconciling credits and debits to treasury fund accounts.

(b) Monitoring cash levels and activities in state bank accounts.

(c) Monitoring short-term investments of idle cash.

(d) Administering the provisions of the Federal Cash Management Improvement Act of 1990.

Section 9. Subsection (3) of section 216.102, Florida Statutes, is amended to read:

216.102 Filing of financial information; handling by Chief Financial Officer; penalty for noncompliance.—

(3) The Chief Financial Officer shall:

(a) Prepare and furnish to the Auditor General annual financial statements for the state on or before December 31 of each year, using generally accepted accounting principles.

(b) Prepare and publish an annual ~~a~~ comprehensive ~~annual~~ financial report for the state in accordance with generally

accepted accounting principles on or before February 28 of each year.

(c) Furnish the Governor, the President of the Senate, and the Speaker of the House of Representatives with a copy of the annual comprehensive ~~annual~~ financial report prepared pursuant to paragraph (b).

(d) Notify each agency and the judicial branch of the data that is required to be recorded to enhance accountability for tracking federal financial assistance.

(e) Provide reports, as requested, to executive or judicial branch entities, the President of the Senate, the Speaker of the House of Representatives, and the members of the Florida Congressional Delegation, detailing the federal financial assistance received and disbursed by state agencies and the judicial branch.

(f) Consult with and elicit comments from the Executive Office of the Governor on changes to the Florida Accounting Information Resource Subsystem which clearly affect the accounting of federal funds, so as to ensure consistency of information entered into the Federal Aid Tracking System by state executive and judicial branch entities. While efforts shall be made to ensure the compatibility of the Florida Accounting Information Resource Subsystem and the Federal Aid Tracking System, any successive systems serving identical or similar functions shall preserve such compatibility.

The Chief Financial Officer may furnish and publish in electronic form the financial statements and the annual comprehensive ~~annual~~ financial report required under paragraphs

(a), (b), and (c).

Section 10. Paragraph (h) of subsection (1) of section 218.32, Florida Statutes, is amended, and paragraph (i) is added to that subsection, to read:

218.32 Annual financial reports; local governmental entities.—

(1)

(h) ~~It is the intent of the Legislature to create~~ The Florida Open Financial Statement System must serve as~~,~~ an interactive repository for governmental financial statements. This system serves as the primary reporting location for government financial information. A local government shall use the system to file with the department copies of all audit reports compiled pursuant to ss. 11.45 and 218.39. The system must be accessible to the public and must be open to inspection at all times by the Legislature, the Auditor General, and the Chief Inspector General.

1. The Chief Financial Officer may consult with stakeholders with regard to~~, including the department, the Auditor General, a representative of a municipality or county, a representative of a special district, a municipal bond investor, and an information technology professional employed in the private sector, for input on the design and implementation of~~ the Florida Open Financial Statement System.

2. The Chief Financial Officer may choose contractors to build one or more eXtensible Business Reporting Language (XBRL) taxonomies suitable for state, county, municipal, and special district financial filings and to create a software tool that enables financial statement filers to easily create XBRL

documents consistent with such taxonomies. The Chief Financial Officer must recruit and select contractors through an open request for proposals process pursuant to chapter 287.

3. The Chief Financial Officer must require that all work products be completed no later than December 31, 2021.

4. If the Chief Financial Officer deems the work products adequate, all local governmental financial statements for fiscal years ending on or after September 1, 2022, may ~~must~~ be filed in XBRL format as prescribed by the Chief Financial Officer ~~and must meet the validation requirements of the relevant taxonomy~~.

5. A local government that begins filing in XBRL format may not be required to make filings in Portable Document Format.

(i) Each local governmental entity that enters all required information in the Florida Open Financial Statement System is deemed to be compliant with this section, except as otherwise provided in this section.

Section 11. Section 395.1061, Florida Statutes, is created to read:

395.1061 Professional liability coverage.—

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

(a) "Committee" means a committee or board of a hospital established to make recommendations, policies, or decisions regarding patient institutional utilization, patient treatment, or institutional staff privileges or to perform other administrative or professional purposes or functions.

(b) "Covered individuals" means the officers; trustees; volunteer workers; trainees; committee members, including physicians, osteopathic physicians, podiatric physicians, and dentists; and employees of the hospital other than employed

physicians licensed under chapter 458, physician assistants licensed under chapter 458, osteopathic physicians licensed under chapter 459, dentists licensed under chapter 466, and podiatric physicians licensed under chapter 461. However, with respect to a hospital, the term also includes house physicians, interns, employed physician residents in a resident training program, and physicians performing purely administrative duties for the hospital instead of treating patients. The coverage applies to the hospital and those included in the definition of health care provider as provided in s. 985.6441(1).

(c) "Hospital system" means two or more hospitals associated by common ownership or corporate affiliation.

(d) "House physician" means any physician, osteopathic physician, podiatric physician, or dentist at a hospital, except:

1. The physician, osteopathic physician, podiatric physician, or dentist who has staff privileges at a hospital, provides emergency room services, or performs a medical or dental service for a fee; or

2. An anesthesiologist, a pathologist, or a radiologist.

(e) "Occurrence" means an accident or incident, including continuous or repeated exposure to certain harmful conditions, which results in patient injuries.

(f) "Per claim" means all claims per patient arising out of an occurrence.

(2) Each hospital, unless exempted under paragraph (3)(b), must demonstrate financial responsibility for maintaining professional liability coverage to pay claims and costs ancillary thereto arising out of the rendering of or failure to

render medical care or services and for bodily injury or property damage to the person or property of any patient arising out of the activities of the hospital or arising out of the activities of covered individuals, to the satisfaction of the agency, by meeting one of the following requirements:

(a) Establish an escrow account in an amount equivalent to $10,000 per claim for each bed in such hospital, not to exceed a $2.5 million annual aggregate.

(b) Obtain professional liability coverage in an amount equivalent to $10,000 or more per claim for each bed in such hospital from a private insurer, from the Joint Underwriting Association established under s. 627.351(4), or through a plan of self-insurance as provided in s. 627.357. However, a hospital may not be required to obtain such coverage in an amount exceeding a $2.5 million annual aggregate.

(3)(a) Each hospital, unless exempted under paragraph (b), shall provide evidence of compliance and remain in continuous compliance with the professional liability coverage provisions of this section. The agency may not issue or renew the license of any hospital that does not provide evidence of compliance or that provides evidence of insufficient coverage.

(b) Any hospital operated by an agency, subdivision, or instrumentality of the state is exempt from the provisions of this section.

(4) A hospital system may meet the professional liability coverage requirement with an escrow account, insurance, or self-insurance policies if the $10,000 per claim and $2.5 million annual aggregate are met for each hospital in the hospital system.

Section 12. Section 414.40, Florida Statutes, is amended to read:

414.40 Stop Inmate Fraud Program established; guidelines.—

(1) There is created within the Department of Economic Opportunity ~~Financial Services~~ a Stop Inmate Fraud Program.

(2) The Department of Economic Opportunity ~~Financial Services~~ is directed to implement the Stop Inmate Fraud Program in accordance with the following guidelines:

(a) The program shall establish procedures for sharing public records not exempt from the public records law among social services agencies regarding the identities of persons incarcerated in state correctional institutions, as defined in s. 944.02, and ~~or~~ in county, municipal, or regional jails or other detention facilities of local governments under chapter 950 and ~~or~~ chapter 951 who are wrongfully receiving public assistance benefits or entitlement benefits.

(b) Pursuant to these procedures, the program shall have access to records containing correctional information not exempt from the public records law on incarcerated persons which have been generated as criminal justice information. As used in this paragraph, the terms "record" and "criminal justice information" have the same meanings as provided in s. 943.045.

(c) Database searches shall be conducted of the inmate population at each correctional institution or other detention facility. A correctional institution or a detention facility shall provide the Stop Inmate Fraud Program with the information necessary to identify persons wrongfully receiving benefits in the medium requested by the Stop Inmate Fraud Program if the correctional institution or detention facility maintains the

information in that medium.

(d) Data obtained from correctional institutions or other detention facilities shall be compared with the client files of the Department of Children and Families, the Department of Economic Opportunity, and other state or local agencies as needed to identify persons wrongfully obtaining benefits. Data comparisons shall be accomplished during periods of low information demand by agency personnel to minimize inconvenience to the agency.

(e) Results of data comparisons shall be furnished to the appropriate office for use in the county in which the data originated. The program may provide reports of the data it obtains to appropriate state, federal, and local government agencies or governmental entities, including, but not limited to:

1. The Child Support Enforcement Program of the Department of Revenue, so that the data may be used as locator information on persons being sought for purposes of child support.

2. The Social Security Administration, so that the data may be used to reduce federal entitlement fraud within the state.

3. The Division of Public Assistance Fraud of the Department of Financial Services, so that an investigation of the fraudulent receipt of public assistance may be facilitated.

(f) Reports by the program to another agency or entity shall be generated bimonthly, or as otherwise directed, and shall be designed to accommodate that agency's or entity's particular needs for data.

(g) Only those persons with active cases, or with cases that were active during the incarceration period, shall be

reported, in order that the funding agency or entity, upon verification of the data, may take whatever action is deemed appropriate.

(h) For purposes of program review and analysis, each agency or entity receiving data from the program shall submit reports to the program which indicate the results of how the data was used.

Section 13. Paragraph (a) of subsection (16) of section 440.02, Florida Statutes, is amended to read:

440.02 Definitions.—When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(16)(a) "Employer" means the state and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustees of any person. The term ~~"Employer"~~ also includes employment agencies and~~,~~ employee leasing companies that~~, and similar agents who~~ provide employees to other business entities or persons. If the employer is a corporation, parties in actual control of the corporation, including, but not limited to, the president, officers who exercise broad corporate powers, directors, and all shareholders who directly or indirectly own a controlling interest in the corporation, are considered the employer for the purposes of ss. 440.105, 440.106, and 440.107.

Section 14. Effective January 1, 2023, subsections (3), (4), (10), and (12) of section 440.05, Florida Statutes, are amended to read:

440.05 Election of exemption; revocation of election;

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notice; certification.—

(3) The notice of election to be exempt must be electronically submitted to the department by the officer of a corporation who is allowed to claim an exemption as provided by this chapter and must list the name, date of birth, valid driver license number or Florida identification card number, and all certified or registered licenses issued pursuant to chapter 489 held by the person seeking the exemption, the registration number of the corporation filed with the Division of Corporations of the Department of State, and the percentage of ownership evidencing the required ownership under this chapter. The notice of election to be exempt must identify each corporation that employs the person electing the exemption and must list the ~~social security number or~~ federal tax identification number of each such employer and the additional documentation required by this section. In addition, the notice of election to be exempt must provide that the officer electing an exemption is not entitled to benefits under this chapter, must provide that the election does not exceed exemption limits for officers provided in s. 440.02, ~~and~~ must certify that any employees of the corporation whose officer elects an exemption are covered by workers' compensation insurance, and must certify that the officer electing an exemption has completed an online workers' compensation coverage and compliance tutorial developed by the department. Upon receipt of the notice of the election to be exempt, receipt of all application fees, and a determination by the department that the notice meets the requirements of this subsection, the department shall issue a certification of the election to the officer, unless the department determines that

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the information contained in the notice is invalid. The department shall revoke a certificate of election to be exempt from coverage upon a determination by the department that the person does not meet the requirements for exemption or that the information contained in the notice of election to be exempt is invalid. The certificate of election must list the name of the corporation listed in the request for exemption. A new certificate of election must be obtained each time the person is employed by a new or different corporation that is not listed on the certificate of election. Upon written request from a workers' compensation carrier, the department shall send thereafter an electronic notification to the carrier identifying each of its policyholders for which a notice of election to be exempt has been issued or for which a notice of revocation to be exempt has been received ~~A notice of the certificate of election must be sent to each workers' compensation carrier identified in the request for exemption~~. Upon filing a notice of revocation of election, an officer who is a subcontractor or an officer of a corporate subcontractor must notify her or his contractor. ~~Upon revocation of a certificate of election of exemption by the department, the department shall notify the workers' compensation carriers identified in the request for exemption.~~

(4) The notice of election to be exempt from the provisions of this chapter must contain a notice that clearly states in substance the following: "Any person who, knowingly and with intent to injure, defraud, or deceive the department or any employer or employee, insurance company, or any other person, files a notice of election to be exempt containing any false or misleading information is guilty of a felony of the third

degree." Each person filing a notice of election to be exempt shall personally sign the notice and attest that he or she has reviewed, understands, and acknowledges the foregoing notice. The certificate of election to be exempt must contain the following notice: "This certificate of election to be exempt is NOT a license issued by the Department of Business and Professional Regulation (DBPR). To determine if the certificateholder is required to have a license to perform work or to verify the license of the certificateholder, go to (insert DBPR's website address for where to find this information)."

~~(10) Each officer of a corporation who is actively engaged in the construction industry and who elects an exemption from this chapter shall maintain business records as specified by the department by rule.~~

(11)~~(12)~~ Certificates of election to be exempt issued under subsection (3) ~~shall~~ apply only to the corporate officer named on the notice of election to be exempt ~~and apply only within the scope of the business or trade listed on the notice of election to be exempt~~.

Section 15. Effective January 1, 2023, paragraphs (a) and (d) of subsection (7) of section 440.107, Florida Statutes, are amended to read:

440.107 Department powers to enforce employer compliance with coverage requirements.—

(7)(a) Whenever the department determines that an employer who is required to secure the payment to his or her employees of the compensation provided for by this chapter has failed to secure the payment of workers' compensation required by this chapter or to produce the required business records under

subsection (5) within 21 ~~10 business~~ days after receipt of the written request of the department, such failure shall be deemed an immediate serious danger to public health, safety, or welfare sufficient to justify service by the department of a stop-work order on the employer, requiring the cessation of all business operations. If the department makes such a determination, the department shall issue a stop-work order within 72 hours. The order shall take effect when served upon the employer or, for a particular employer worksite, when served at that worksite. In addition to serving a stop-work order at a particular worksite which shall be effective immediately, the department shall immediately proceed with service upon the employer which shall be effective upon all employer worksites in the state for which the employer is not in compliance. A stop-work order may be served with regard to an employer's worksite by posting a copy of the stop-work order in a conspicuous location at the worksite. Information related to an employer's stop-work order shall be made available on the division's website~~, be updated daily,~~ and remain on the website for at least 5 years. The order shall remain in effect until the department issues an order releasing the stop-work order upon a finding that the employer has come into compliance with the coverage requirements of this chapter and has paid any penalty assessed under this section. The department may issue an order of conditional release from a stop-work order to an employer upon a finding that the employer has complied with the coverage requirements of this chapter, paid a penalty of $1,000 as a down payment, and agreed to remit periodic payments of the remaining penalty amount pursuant to a payment agreement schedule with the department or pay the

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remaining penalty amount in full. An employer may not enter into a payment agreement schedule unless the employer has fully paid any previous penalty assessed under this section. If an order of conditional release is issued, failure by the employer to pay the penalty in full or enter into a payment agreement with the department within 21 ~~28~~ days after service of the first penalty assessment calculation ~~stop-work order~~ upon the employer, or to meet any term or condition of such penalty payment agreement, shall result in the immediate reinstatement of the stop-work order and the entire unpaid balance of the penalty shall become immediately due.

(d)1. In addition to any penalty, stop-work order, or injunction, the department shall assess against an ~~any~~ employer who has failed to secure the payment of compensation as required by this chapter a penalty equal to 2 times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation required by this chapter within the preceding 12-month ~~2 year~~ period or $1,000, whichever is greater. However, for an employer who is issued a stop-work order for materially understating or concealing payroll or has been previously issued a stop-work order or an order of penalty assessment, the preceding 24-month period shall be used to calculate the penalty as specified in this subparagraph.

a. For an employer ~~employers~~ who has ~~have~~ not been previously issued a stop-work order or order of penalty assessment, the department must allow the employer to receive a credit for the initial payment of the estimated annual workers'

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compensation policy premium, as determined by the carrier, to be applied to the penalty. Before applying the credit to the penalty, the employer must provide the department with documentation reflecting that the employer has secured the payment of compensation pursuant to s. 440.38 and proof of payment to the carrier. In order for the department to apply a credit for an employer that has secured workers' compensation for leased employees by entering into an employee leasing contract with a licensed employee leasing company, the employer must provide the department with a written confirmation, by a representative from the employee leasing company, of the dollar or percentage amount attributable to the initial estimated workers' compensation expense for leased employees, and proof of payment to the employee leasing company. The credit may not be applied unless the employer provides the documentation and proof of payment to the department within 21 ~~28~~ days after the employer's receipt of the written request to produce business records for calculating the penalty under this subparagraph ~~service of the stop-work order or first order of penalty assessment upon the employer~~.

b. For an employer ~~employers~~ who has ~~have~~ not been previously issued a stop-work order or order of penalty assessment, the department must reduce the final assessed penalty by 25 percent if the employer has complied with administrative rules adopted pursuant to subsection (5) and has provided such business records to the department within 21 ~~10 business~~ days after the employer's receipt of the written request to produce business records for calculating the penalty under this subparagraph.

c. For an employer who has not been previously issued a stop-work order or an order of penalty assessment, the department must reduce the final assessed penalty by 15 percent if the employer correctly answers at least 80 percent of the questions from an online workers' compensation coverage and compliance tutorial, developed by the department, within 21 days after the employer's receipt of the written request to produce business records for calculating the penalty under this subparagraph. The online tutorial must be taken in a department office location identified by rule.

The $1,000 penalty shall be assessed against the employer even if the calculated penalty after the credit provided in sub-subparagraph a., the ~~and~~ 25 percent reduction provided in sub-subparagraph b., and the 15 percent reduction provided in sub-subparagraph c., as applicable, have been applied is less than $1,000.

2. Any subsequent violation within 5 years after the most recent violation shall, in addition to the penalties set forth in this subsection, be deemed a knowing act within the meaning of s. 440.105.

Section 16. Subsection (12) of section 440.13, Florida Statutes, is amended to read:

440.13 Medical services and supplies; penalty for violations; limitations.—

(12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM REIMBURSEMENT ALLOWANCES.—

(a) A three-member panel is created, consisting of the Chief Financial Officer, or the Chief Financial Officer's

designee, and two members to be appointed by the Governor, subject to confirmation by the Senate, one member who, on account of present or previous vocation, employment, or affiliation, shall be classified as a representative of employers, the other member who, on account of previous vocation, employment, or affiliation, shall be classified as a representative of employees. The panel shall determine statewide schedules of maximum reimbursement allowances for medically necessary treatment, care, and attendance provided by physicians, hospitals, ambulatory surgical centers, work-hardening programs, pain programs, and durable medical equipment. The maximum reimbursement allowances for inpatient hospital care shall be based on a schedule of per diem rates, to be approved by the three-member panel no later than March 1, 1994, to be used in conjunction with a precertification manual as determined by the department, including maximum hours in which an outpatient may remain in observation status, which shall not exceed 23 hours. All compensable charges for hospital outpatient care shall be reimbursed at 75 percent of usual and customary charges, except as otherwise provided by this subsection. Annually, the three-member panel shall adopt schedules of maximum reimbursement allowances for physicians, hospital inpatient care, hospital outpatient care, ambulatory surgical centers, work-hardening programs, and pain programs. An individual physician, hospital, ambulatory surgical center, pain program, or work-hardening program shall be reimbursed:

1. ~~either~~ The agreed-upon contract price; or

2. If there is no agreed-upon contract price, the lesser of the provider's billed charge or the maximum reimbursement

allowance in the appropriate schedule.

(b) It is the intent of the Legislature to increase the schedule of maximum reimbursement allowances for selected physicians effective January 1, 2004, and to pay for the increases through reductions in payments to hospitals. Revisions developed pursuant to this subsection are limited to the following:

1. Payments for outpatient physical, occupational, and speech therapy provided by hospitals shall be reduced to the schedule of maximum reimbursement allowances for these services which applies to nonhospital providers.

2. Payments for scheduled outpatient nonemergency radiological and clinical laboratory services that are not provided in conjunction with a surgical procedure shall be reduced to the schedule of maximum reimbursement allowances for these services which applies to nonhospital providers.

3. Outpatient reimbursement for scheduled surgeries shall be reduced from 75 percent of charges to 60 percent of charges.

4. Maximum reimbursement for a physician licensed under chapter 458 or chapter 459 shall be increased to 110 percent of the reimbursement allowed by Medicare, using appropriate codes and modifiers or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is greater.

5. Maximum reimbursement for surgical procedures shall be increased to 140 percent of the reimbursement allowed by Medicare or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is greater.

(c) As to reimbursement for a prescription medication, the reimbursement amount for a prescription shall be the average

wholesale price plus $4.18 for the dispensing fee. For repackaged or relabeled prescription medications dispensed by a dispensing practitioner as provided in s. 465.0276, the fee schedule for reimbursement shall be 112.5 percent of the average wholesale price, plus $8.00 for the dispensing fee. For purposes of this subsection, the average wholesale price shall be calculated by multiplying the number of units dispensed times the per-unit average wholesale price set by the original manufacturer of the underlying drug dispensed by the practitioner, based upon the published manufacturer's average wholesale price published in the Medi-Span Master Drug Database as of the date of dispensing. All pharmaceutical claims submitted for repackaged or relabeled prescription medications must include the National Drug Code of the original manufacturer. Fees for pharmaceuticals and pharmaceutical services shall be reimbursable at the applicable fee schedule amount except where the employer or carrier, or a service company, third party administrator, or any entity acting on behalf of the employer or carrier directly contracts with the provider seeking reimbursement for a lower amount.

(d) Reimbursement for all fees and other charges for such treatment, care, and attendance, including treatment, care, and attendance provided by any hospital or other health care provider, ambulatory surgical center, work-hardening program, or pain program, must not exceed the amounts provided by the uniform schedule of maximum reimbursement allowances as determined by the panel or as otherwise provided in this section. This subsection also applies to independent medical examinations performed by health care providers under this

chapter. In determining the uniform schedule, the panel shall first approve the data which it finds representative of prevailing charges in the state for similar treatment, care, and attendance of injured persons. Each health care provider, health care facility, ambulatory surgical center, work-hardening program, or pain program receiving workers' compensation payments shall maintain records verifying their usual charges. In establishing the uniform schedule of maximum reimbursement allowances, the panel must consider:

1. The levels of reimbursement for similar treatment, care, and attendance made by other health care programs or third-party providers;

2. The impact upon cost to employers for providing a level of reimbursement for treatment, care, and attendance which will ensure the availability of treatment, care, and attendance required by injured workers;

3. The financial impact of the reimbursement allowances upon health care providers and health care facilities, including trauma centers as defined in s. 395.4001, and its effect upon their ability to make available to injured workers such medically necessary remedial treatment, care, and attendance. The uniform schedule of maximum reimbursement allowances must be reasonable, must promote health care cost containment and efficiency with respect to the workers' compensation health care delivery system, and must be sufficient to ensure availability of such medically necessary remedial treatment, care, and attendance to injured workers; and

4. The most recent average maximum allowable rate of increase for hospitals determined by the Health Care Board under

chapter 408.

(e) In addition to establishing the uniform schedule of maximum reimbursement allowances, the panel shall:

1. Take testimony, receive records, and collect data to evaluate the adequacy of the workers' compensation fee schedule, nationally recognized fee schedules and alternative methods of reimbursement to health care providers and health care facilities for inpatient and outpatient treatment and care.

2. Survey health care providers and health care facilities to determine the availability and accessibility of workers' compensation health care delivery systems for injured workers.

3. Survey carriers to determine the estimated impact on carrier costs and workers' compensation premium rates by implementing changes to the carrier reimbursement schedule or implementing alternative reimbursement methods.

4. Submit recommendations on or before January 15, 2017, and biennially thereafter, to the President of the Senate and the Speaker of the House of Representatives on methods to improve the workers' compensation health care delivery system.

The department, as requested, shall provide data to the panel, including, but not limited to, utilization trends in the workers' compensation health care delivery system. The department shall provide the panel with an annual report regarding the resolution of medical reimbursement disputes and any actions pursuant to subsection (8). The department shall provide administrative support and service to the panel to the extent requested by the panel and may adopt rules necessary to administer this subsection. For prescription medication

purchased under the requirements of this subsection, a dispensing practitioner shall not possess such medication unless payment has been made by the practitioner, the practitioner's professional practice, or the practitioner's practice management company or employer to the supplying manufacturer, wholesaler, distributor, or drug repackager within 60 days of the dispensing practitioner taking possession of that medication.

Section 17. Subsection (3) of section 440.185, Florida Statutes, is amended to read:

440.185 Notice of injury or death; reports; penalties for violations.—

(3) Within 3 business days after the employer or the employee informs the carrier of an injury, the carrier shall send by regular mail or e-mail to the injured worker an informational brochure approved by the department which sets forth in clear and understandable language an explanation of the rights, benefits, procedures for obtaining benefits and assistance, criminal penalties, and obligations of injured workers and their employers under the Florida Workers' Compensation Law. Annually, the carrier or its third-party administrator shall send by regular mail or e-mail to the employer an informational brochure approved by the department which sets forth in clear and understandable language an explanation of the rights, benefits, procedures for obtaining benefits and assistance, criminal penalties, and obligations of injured workers and their employers under the Florida Workers' Compensation Law. All such informational brochures shall contain a notice that clearly states in substance the following: "Any person who, knowingly and with intent to injure, defraud, or

deceive any employer or employee, insurance company, or self-insured program, files a statement of claim containing any false or misleading information commits a felony of the third degree."

Section 18. Subsection (3) of section 440.381, Florida Statutes, is amended to read:

440.381 Application for coverage; reporting payroll; payroll audit procedures; penalties.—

(3) The Financial Services Commission, in consultation with the department, shall establish by rule minimum requirements for audits of payroll and classifications ~~in order~~ to ensure that the appropriate premium is charged for workers' compensation coverage. The rules must ~~shall~~ ensure that audits performed by both carriers and employers are adequate to provide that all sources of payments to employees, subcontractors, and independent contractors are ~~have been~~ reviewed and that the accuracy of classification of employees is ~~has been~~ verified. The rules must require ~~shall provide~~ that employers in all classes other than the construction class be audited at least ~~not less frequently than~~ biennially and may provide for more frequent audits of employers in specified classifications based on factors such as amount of premium, type of business, loss ratios, or other relevant factors. ~~In no event shall~~ Employers in the construction class~~,~~ generating more than the amount of premium required to be experience rated must~~,~~ be audited at least ~~less than~~ annually. The annual audits required for construction classes must ~~shall~~ consist of physical onsite audits for policies only if the estimated annual premium is $10,000 or more. Payroll verification audit rules must include, but need not be limited to, the use of state and federal reports

of employee income, payroll and other accounting records, certificates of insurance maintained by subcontractors, and duties of employees. At the completion of an audit, the employer or officer of the corporation and the auditor must print and sign their names on the audit document and attach proof of identification to the audit document.

Section 19. Subsection (2) of section 497.277, Florida Statutes, is amended to read:

497.277 Other charges.—Other than the fees for the sale of burial rights, burial merchandise, and burial services, no other fee may be directly or indirectly charged, contracted for, or received by a cemetery company as a condition for a customer to use any burial right, burial merchandise, or burial service, except for:

(2) Charges paid for transferring burial rights from one purchaser to another~~; however, no such fee may exceed $50~~.

Section 20. Paragraph (b) of subsection (1) of section 497.369, Florida Statutes, is amended to read:

497.369 Embalmers; licensure as an embalmer by endorsement; licensure of a temporary embalmer.—

(1) The licensing authority shall issue a license by endorsement to practice embalming to an applicant who has remitted an examination fee set by rule of the licensing authority not to exceed $200 and who the licensing authority certifies:

(b)1. Holds a valid license in good standing to practice embalming in another state of the United States and has engaged in the full-time, licensed practice of embalming in that state for at least 5 years~~, provided that, when the applicant secured~~

her or his original license, the requirements for licensure were substantially equivalent to or more stringent than those existing in this state; or

2. Meets the qualifications for licensure in s. 497.368, except that the internship requirement shall be deemed to have been satisfied by 1 year's practice as a licensed embalmer in another state, and has, within 10 years before prior to the date of application, successfully completed a state, regional, or national examination in mortuary science, which, as determined by rule of the licensing authority, is substantially equivalent to or more stringent than the examination given by the licensing authority.

Section 21. Paragraphs (b) and (f) of subsection (1) of section 497.372, Florida Statutes, are amended to read:

497.372 Funeral directing; conduct constituting practice of funeral directing.—

(1) The practice of funeral directing shall be construed to consist of the following functions, which may be performed only by a licensed funeral director:

(b) Planning or arranging, on an at-need basis, the details of funeral services, embalming, cremation, or other services relating to the final disposition of human remains, and including the removal of such remains from the state; setting the time of the services; establishing the type of services to be rendered; acquiring the services of the clergy; and obtaining vital information for the filing of death certificates and obtaining of burial transit permits.

(f) Directing, being in charge or apparent charge of, or supervising, directly or indirectly, any memorial service held

prior to or within 72 hours of the burial or cremation, if such memorial service is sold or arranged by a licensee.

Section 22. Paragraph (b) of subsection (1) of section 497.374, Florida Statutes, is amended to read:

497.374 Funeral directing; licensure as a funeral director by endorsement; licensure of a temporary funeral director.—

(1) The licensing authority shall issue a license by endorsement to practice funeral directing to an applicant who has remitted a fee set by rule of the licensing authority not to exceed $200 and who:

(b)1. Holds a valid license in good standing to practice funeral directing in another state of the United States and has engaged in the full-time, licensed practice of funeral directing in that state for at least 5 years, provided that, when the applicant secured her or his original license, the requirements for licensure were substantially equivalent to or more stringent than those existing in this state; or

2. Meets the qualifications for licensure in s. 497.373, except that the applicant need not hold an associate degree or higher if the applicant holds a diploma or certificate from an accredited program of mortuary science, and has successfully completed a state, regional, or national examination in mortuary science or funeral service arts, which, as determined by rule of the licensing authority, is substantially equivalent to or more stringent than the examination given by the licensing authority.

Section 23. Present subsection (6) of section 554.108, Florida Statutes, is redesignated as subsection (7), a new subsection (6) is added to that section, and subsection (1) of that section is amended, to read:

554.108 Inspection.—

(1) The inspection requirements of this chapter apply only to boilers located in public assembly locations. A ~~potable hot water supply~~ boiler with an ~~a heat~~ input of 200,000 British thermal units (Btu) per hour and above, up to an ~~a heat~~ input not exceeding 400,000 Btu per hour, is exempt from inspection; however, such an exempt boiler, if manufactured after July 1, 2022, ~~but~~ must be stamped with the A.S.M.E. code symbol. Additionally, ~~"HLW" and~~ the ~~boiler's~~ A.S.M.E data report of a boiler with an input of 200,000 to 400,000 Btu per hour must be filed as required under s. 554.103(2).

(6) Each enclosed space or room containing a boiler regulated under this chapter which is fired by the direct application of energy from the combustion of fuels and which is located in any portion of a public lodging establishment under s. 509.242 shall be equipped with one or more carbon monoxide detector devices.

Section 24. Paragraphs (a) and (e) of subsection (1) and paragraph (a) of subsection (2) of section 554.111, Florida Statutes, are amended to read:

554.111 Fees.—

(1) The department shall charge the following fees:

(a) For an applicant for a certificate of competency, the initial application fee shall be $50, and the annual renewal fee shall be $30. ~~The fee for examination shall be $50.~~

(e) An application for a boiler permit must include the manufacturer's data report ~~applicable certificate inspection fee provided in paragraph (b)~~.

(2) Not more than an amount equal to one certificate

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inspection fee may be charged or collected for any and all boiler inspections in any inspection period, except as otherwise provided in this chapter.

(a) When it is necessary to make a special trip for testing and verification inspections ~~to observe the application of a hydrostatic test~~, an additional fee equal to the fee for a certificate inspection of the boiler must be charged.

Section 25. Subsection (4) of section 554.114, Florida Statutes, is amended to read:

554.114 Prohibitions; penalties.—

(4) A boiler insurance company, authorized inspection agency, or other person in violation of this section for more than 30 days shall pay a fine of $10 per day for the subsequent ~~first~~ 10 days of noncompliance, $50 per day for the subsequent 20 days of noncompliance, and $100 per day for each subsequent day ~~over 20 days~~ of noncompliance thereafter.

Section 26. Subsection (9) of section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(9) Upon receiving service of legal process issued in any civil action or proceeding in this state against any regulated person or any unauthorized insurer under s. 626.906 or s. 626.937 that ~~which~~ is required to appoint the Chief Financial Officer as its agent ~~attorney~~ to receive service of all legal process, the Chief Financial Officer shall make the process available through a secure online portal~~, as attorney, may, in lieu of sending the process by registered or certified mail, send the process or make it available by any other verifiable means, including, but not limited to, making the documents~~

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~~available by electronic transmission from a secure website~~ established by the department to the person last designated by the regulated person or the unauthorized insurer to receive the process. When process documents are made available electronically, the Chief Financial Officer shall promptly send a notice of receipt of service of process to the person last designated by the regulated person or unauthorized insurer to receive legal process. The notice must state the date ~~and manner in which the copy of~~ the process was made available to the regulated person or unauthorized insurer being served and contain the uniform resource locator (URL) where ~~for a hyperlink to access files and information on the department's website to obtain a copy of~~ the process may be obtained.

Section 27. Section 624.422, Florida Statutes, is amended to read:

624.422 Service of process; appointment of Chief Financial Officer as process agent.—

(1) Each licensed insurer, whether domestic, foreign, or alien, shall be deemed to have appointed the Chief Financial Officer and her or his successors in office as its agent ~~attorney~~ to receive service of all legal process issued against it in any civil action or proceeding in this state; and process so served shall be valid and binding upon the insurer.

(2) Before ~~Prior to~~ its authorization to transact insurance in this state, each insurer shall file with the department designation of the name and e-mail address of the person to whom process against it served upon the Chief Financial Officer is to be made available through the department's secure online portal ~~forwarded~~. Each insurer shall also file with the department

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designation of the name and e-mail address of the person to whom the department shall forward civil remedy notices filed under s. 624.155. The insurer may change a designation at any time by a new filing.

(3) Service of process submitted through the department's secure online portal upon the Chief Financial Officer as the insurer's agent ~~attorney~~ pursuant to such an appointment shall be the sole method of service of process upon an authorized domestic, foreign, or alien insurer in this state.

Section 28. Subsection (1) of section 624.423, Florida Statutes, is amended to read:

624.423 Serving process.—

(1) Service of process upon the Chief Financial Officer as process agent of the insurer under s. 624.422 and s. 626.937 shall be made ~~by serving a copy of the process upon the Chief Financial Officer or upon her or his assistant, deputy, or other person in charge of her or his office. Service may also be made by mail or~~ electronically as provided in s. 48.151(3) ~~s. 48.151~~. Upon receiving such service, the Chief Financial Officer shall retain a record of the process ~~copy~~ and promptly notify and make ~~forward one copy of~~ the process available through the department's secure online portal ~~by registered or certified mail or by other verifiable means~~, as provided under s. 624.307(9), to the person last designated by the insurer to receive the same, as provided under s. 624.422(2). For purposes of this section, records shall ~~may~~ be retained electronically ~~as paper or electronic copies~~.

Section 29. Paragraph (f) of subsection (3) and paragraph (d) of subsection (4) of section 624.610, Florida Statutes, are

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amended to read:

624.610 Reinsurance.—

(3)

(f) If the assuming insurer is not authorized or accredited to transact insurance or reinsurance in this state pursuant to paragraph (a) or paragraph (b), the credit permitted by paragraph (c) or paragraph (d) must not be allowed unless the assuming insurer agrees in the reinsurance agreements:

1.a. That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

b. To designate the Chief Financial Officer, pursuant to s. 48.151(3) ~~s. 48.151~~, as its true and lawful agent ~~attorney~~ upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

2. This paragraph is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

(4) Credit must be allowed when the reinsurance is ceded to an assuming insurer meeting the requirements of this subsection.

(d) The assuming insurer must, in a form specified by the commission:

1. Agree to provide prompt written notice and explanation

to the office if the assuming insurer falls below the minimum requirements set forth in paragraph (b) or paragraph (c), or if any regulatory action is taken against it for serious noncompliance with applicable law of any jurisdiction.

2. Consent in writing to the jurisdiction of the courts of this state and to the designation of the Chief Financial Officer, pursuant to s. 48.151(3) ~~s. 48.151~~, as its true and lawful agent ~~attorney~~ upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer. This subparagraph does not limit or alter in any way the capacity of parties to a reinsurance agreement to agree to an alternative dispute resolution mechanism, except to the extent that such agreement is unenforceable under applicable insolvency or delinquency laws.

3. Consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor which have been declared enforceable in the jurisdiction where the judgment was obtained.

4. Confirm in writing that it will include in each reinsurance agreement a provision requiring the assuming insurer to provide security in an amount equal to 100 percent of the assuming insurer’s liabilities attributable to reinsurance ceded pursuant to that agreement, if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or enforcement of a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate.

5. Confirm in writing that it is not presently

participating in any solvent scheme of arrangement which involves this state's ceding insurers, and agree to notify the ceding insurer and the office and to provide security in an amount equal to 100 percent of the assuming insurer's liabilities to the ceding insurer if the assuming insurer enters into such a solvent scheme of arrangement. Such security must be consistent with subsection (5) or as specified by commission rule.

Section 30. Present subsections (12) through (21) of section 626.015, Florida Statutes, are redesignated as subsections (13) through (22), respectively, a new subsection (12) is added to that section, and present subsection (20) of that section is amended, to read:

626.015 Definitions.—As used in this part:

(12) "Licensing authority" means the respective jurisdiction of the department or the office, as provided by law.

(21)~~(20)~~ "Unaffiliated insurance agent" means a licensed insurance agent, except a limited lines agent, who is self-appointed and who practices as an independent consultant in the business of analyzing or abstracting insurance policies, providing insurance advice or counseling, or making specific recommendations or comparisons of insurance products for a fee established in advance by written contract signed by the parties. An unaffiliated insurance agent may not be affiliated with an insurer, insurer-appointed insurance agent, or insurance agency contracted with or employing insurer-appointed insurance agents. A licensed adjuster who is also an unaffiliated insurance agent may obtain an adjuster appointment in order to

adjust claims while holding an unaffiliated appointment on the agent license.

Section 31. Subsection (4) of section 626.171, Florida Statutes, is amended to read:

626.171 Application for license as an agent, customer representative, adjuster, service representative, or reinsurance intermediary.—

(4) An applicant for a license issued by the department under this chapter ~~as an agent, customer representative, adjuster, service representative, or reinsurance intermediary~~ must submit a set of the individual applicant's fingerprints, or, if the applicant is not an individual, a set of the fingerprints of the sole proprietor, majority owner, partners, officers, and directors, to the department and must pay the fingerprint processing fee set forth in s. 624.501. Fingerprints must be processed in accordance with s. 624.34 and used to investigate the applicant's qualifications pursuant to s. 626.201. The fingerprints must be taken by a law enforcement agency, designated examination center, or other department-approved entity. The department shall require all designated examination centers to have fingerprinting equipment and to take fingerprints from any applicant or prospective applicant who pays the applicable fee. The department may not approve an application for licensure as an agent, customer service representative, adjuster, service representative, or reinsurance intermediary if fingerprints have not been submitted.

Section 32. Paragraph (f) of subsection (2) of section 626.172, Florida Statutes, is amended to read:

626.172 Application for insurance agency license.—

(2) An application for an insurance agency license must be signed by an individual required to be listed in the application under paragraph (a). An insurance agency may permit a third party to complete, submit, and sign an application on the insurance agency's behalf; however, the insurance agency is responsible for ensuring that the information on the application is true and correct and is accountable for any misstatements or misrepresentations. The application for an insurance agency license must include:

(f) The fingerprints submitted in accordance with s. 626.171(4) of each of the following:

1. A sole proprietor;

2. Each individual required to be listed in the application under paragraph (a); and

3. Each individual who directs or participates in the management or control of an incorporated agency whose shares are not traded on a securities exchange.

~~Fingerprints must be taken by a law enforcement agency or other entity approved by the department and must be accompanied by the fingerprint processing fee specified in s. 624.501. Fingerprints must be processed in accordance with s. 624.34. However,~~ Fingerprints need not be filed for an individual who is currently licensed and appointed under this chapter. This paragraph does not apply to corporations whose voting shares are traded on a securities exchange.

Section 33. Section 626.173, Florida Statutes, is created to read:

626.173 Insurance agency closure; cancellation of licenses.—

(1) If a licensed insurance agency permanently ceases the transaction of insurance or ceases the transaction of insurance for more than 30 days, the agent in charge, the director of the agency, or other officer listed on the original application for licensure must, within 35 days after the agency first ceases the transaction of insurance, do all of the following:

(a) Cancel the insurance agency's license by completing and submitting a form prescribed by the department to notify the department of the cancellation of the license.

(b) Notify all insurers by which the agency or agent in charge is appointed of the agency's cessation of operations, the date on which operations ceased, the identity of any agency or agent to which the agency's current book of business has been transferred, and the method by which agency records may be obtained during the time periods specified in ss. 626.561 and 626.748.

(c) Notify all policyholders currently insured by a policy written, produced, or serviced by the agency of the agency's cessation of operations; the date on which operations ceased; and the identity of the agency or agent to which the agency's current book of business has been transferred or, if no transfer has occurred, a statement directing the policyholder to contact the insurance company for assistance in locating a licensed agent to service the policy.

(d) Notify all premium finance companies through which active policies are financed of the agency's cessation of operations, the date on which operations ceased, and the identity of the agency or agent to which the agency's current

book of business has been transferred.

(e) Ensure that all funds held in a fiduciary capacity are properly distributed to the rightful owners.

(2)(a) The department may, in a proceeding initiated pursuant to chapter 120, impose an administrative fine against the agent in charge or director or officer of the agency found in the proceeding to have violated any provision of this section. A proceeding may not be initiated and a fine may not accrue until after the person has been notified in writing of the nature of the violation, has been afforded 10 business days to correct the violation, and has failed to do so.

(b) A fine imposed under this subsection may not exceed the amounts specified in s. 626.681 per violation.

(c) The department may, in addition to the imposition of an administrative fine under this subsection, suspend or revoke the license of a licensee fined under this subsection.

(d) In imposing any administrative penalty or remedy provided under this subsection, the department shall take into account the appropriateness of the penalty with respect to the size of the financial resources and the good faith of the person charged, the gravity of the violation, the history of previous violations, and other matters as justice may require.

Section 34. Subsection (3) of section 626.201, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

626.201 Investigation.—

(3) An inquiry or investigation of the applicant's qualifications, character, experience, background, and fitness must include submission of the applicant's fingerprints, in

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accordance with s. 626.171(4), to the Department of Law Enforcement and the Federal Bureau of Investigation and consideration of any state criminal records, federal criminal records, or local criminal records obtained from these agencies or from local law enforcement agencies.

(4) The expiration, nonrenewal, or surrender of a license under this chapter does not eliminate jurisdiction of the licensing authority to investigate and prosecute for a violation committed by the licensee while licensed under this chapter. The prosecution of any matter may be initiated or continued notwithstanding the withdrawal of a complaint.

Section 35. Section 626.202, Florida Statutes, is amended to read:

626.202 Fingerprinting requirements.—

(1) The requirements for completion and submission of fingerprints under this chapter in accordance with s. 626.171(4) are deemed to be met when an individual currently licensed under this chapter seeks additional licensure and has previously submitted fingerprints to the department within the past 48 months. However, the department may require the individual to file fingerprints if it has reason to believe that an applicant or licensee has been found guilty of, or pleaded guilty or nolo contendere to, a felony or a crime related to the business of insurance in this state or any other state or jurisdiction.

(2) If there is a change in ownership or control of any entity licensed under this chapter, or if a new partner, officer, or director is employed or appointed, a set of fingerprints of the new owner, partner, officer, or director must be filed with the department or office within 30 days after

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the change. The acquisition of 10 percent or more of the voting securities of a licensed entity is considered a change of ownership or control. The fingerprints must be submitted in accordance with s. 626.171(4) ~~taken by a law enforcement agency or other department approved entity and be accompanied by the fingerprint processing fee in s. 624.501~~.

Section 36. Paragraph (j) of subsection (2) of section 626.221, Florida Statutes, is amended to read:

626.221 Examination requirement; exemptions.—

(2) However, an examination is not necessary for any of the following:

(j) An applicant for license as an all-lines adjuster who has the designation of Accredited Claims Adjuster (ACA) from a regionally accredited postsecondary institution in this state, Certified All Lines Adjuster (CALA) from Kaplan Financial Education, Associate in Claims (AIC) from the Insurance Institute of America, Professional Claims Adjuster (PCA) from the Professional Career Institute, Professional Property Insurance Adjuster (PPIA) from the HurriClaim Training Academy, Certified Adjuster (CA) from ALL LINES Training, Certified Claims Adjuster (CCA) from AE21 Incorporated, Claims Adjuster Certified Professional (CACP) from WebCE, Inc., Accredited Insurance Claims Specialist (AICS) from Encore Claim Services, or Universal Claims Certification (UCC) from Claims and Litigation Management Alliance (CLM) whose curriculum has been approved by the department and which includes comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard department testing for the all-lines adjuster license. The department shall adopt

rules establishing standards for the approval of curriculum.

Section 37. Subsection (6) of section 626.311, Florida Statutes, is amended to read:

626.311 Scope of license.—

(6) An agent who appoints his or her license as an unaffiliated insurance agent may not hold an appointment from an insurer for any license he or she holds, with the exception of an adjuster license; transact, solicit, or service an insurance contract on behalf of an insurer; interfere with commissions received or to be received by an insurer-appointed insurance agent or an insurance agency contracted with or employing insurer-appointed insurance agents; or receive compensation or any other thing of value from an insurer, an insurer-appointed insurance agent, or an insurance agency contracted with or employing insurer-appointed insurance agents for any transaction or referral occurring after the date of appointment as an unaffiliated insurance agent. An unaffiliated insurance agent may continue to receive commissions on sales that occurred before the date of appointment as an unaffiliated insurance agent if the receipt of such commissions is disclosed when making recommendations or evaluating products for a client that involve products of the entity from which the commissions are received. An adjuster who holds an adjuster license and who is also an unaffiliated insurance agent may obtain an adjuster appointment while maintaining his or her unaffiliated insurance agent appointment and may adjust claims and receive compensation in accordance with the authority granted by the adjuster license and appointment.

Section 38. Paragraph (h) of subsection (1) of section

626.321, Florida Statutes, is amended to read:

626.321 Limited licenses and registration.—

(1) The department shall issue to a qualified applicant a license as agent authorized to transact a limited class of business in any of the following categories of limited lines insurance:

(h) *Portable electronics insurance.*—License for property insurance or inland marine insurance that covers only loss, theft, mechanical failure, malfunction, or damage for portable electronics.

1. The license may be issued only to:

a. Employees or authorized representatives of a licensed general lines agent; or

b. The lead business location of a retail vendor that sells portable electronics insurance. The lead business location must have a contractual relationship with a general lines agent.

2. Employees or authorized representatives of a licensee under subparagraph 1. may sell or offer for sale portable electronics coverage without being subject to licensure as an insurance agent if:

a. Such insurance is sold or offered for sale at a licensed location or at one of the licensee’s branch locations if the branch location is appointed by the licensed lead business location or its appointing insurers;

b. The insurer issuing the insurance directly supervises or appoints a general lines agent to supervise the sale of such insurance, including the development of a training program for the employees and authorized representatives of vendors that are directly engaged in the activity of selling or offering the

insurance; and

c. At each location where the insurance is offered, brochures or other written materials that provide the information required by this subparagraph are made available to all prospective customers. The brochures or written materials may include information regarding portable electronics insurance, service warranty agreements, or other incidental services or benefits offered by a licensee.

3. Individuals not licensed to sell portable electronics insurance may not be paid commissions based on the sale of such coverage. However, a licensee who uses a compensation plan for employees and authorized representatives which includes supplemental compensation for the sale of noninsurance products, in addition to a regular salary or hourly wages, may include incidental compensation for the sale of portable electronics insurance as a component of the overall compensation plan.

4. Brochures or other written materials related to portable electronics insurance must:

a. Disclose that such insurance may duplicate coverage already provided by a customer’s homeowners insurance policy, renters insurance policy, or other source of coverage;

b. State that enrollment in insurance coverage is not required in order to purchase or lease portable electronics or services;

c. Summarize the material terms of the insurance coverage, including the identity of the insurer, the identity of the supervising entity, the amount of any applicable deductible and how it is to be paid, the benefits of coverage, and key terms and conditions of coverage, such as whether portable electronics

may be repaired or replaced with similar make and model reconditioned or nonoriginal manufacturer parts or equipment;

d. Summarize the process for filing a claim, including a description of how to return portable electronics and the maximum fee applicable if the customer fails to comply with equipment return requirements; and

e. State that an enrolled customer may cancel coverage at any time and that the person paying the premium will receive a refund of any unearned premium.

5. A licensed and appointed general lines agent is not required to obtain a portable electronics insurance license to offer or sell portable electronics insurance at locations already licensed as an insurance agency, but may apply for a portable electronics insurance license for branch locations not otherwise licensed to sell insurance.

6. A portable electronics license authorizes the sale of individual policies or certificates under a group or master insurance policy. The license also authorizes the sale of service warranty agreements covering only portable electronics to the same extent as if licensed under s. 634.419 or s. 634.420.

7. A licensee may bill and collect the premium for the purchase of portable electronics insurance provided that:

a. If the insurance is included with the purchase or lease of portable electronics or related services, the licensee clearly and conspicuously discloses that insurance coverage is included with the purchase. Disclosure of the stand-alone cost of the premium for same or similar insurance must be made on the customer's bill and in any marketing materials made available at

the point of sale. If the insurance is not included, the charge to the customer for the insurance must be separately itemized on the customer's bill.

b. Premiums are incidental to other fees collected, are maintained in a manner that is readily identifiable, and are accounted for and remitted to the insurer or supervising entity within 60 days of receipt. Licensees are not required to maintain such funds in a segregated account.

c. All funds received by a licensee from an enrolled customer for the sale of the insurance are considered funds held in trust by the licensee in a fiduciary capacity for the benefit of the insurer. Licensees may receive compensation for billing and collection services.

8. Notwithstanding any other provision of law, the terms for the termination or modification of coverage under a policy of portable electronics insurance are those set forth in the policy.

9. Notice or correspondence required by the policy, or otherwise required by law, may be provided by electronic means if the insurer or licensee maintains proof that the notice or correspondence was sent. Such notice or correspondence may be sent on behalf of the insurer or licensee by the general lines agent appointed by the insurer to supervise the administration of the program. For purposes of this subparagraph, an enrolled customer's provision of an electronic mail address to the insurer or licensee is deemed to be consent to receive notices and correspondence by electronic means if a conspicuously located disclosure is provided to the customer indicating the same.

10. The ~~provisions of this chapter requiring submission of~~ fingerprints requirements in s. 626.171(4) do not apply to licenses issued to qualified entities under this paragraph.

11. A branch location that sells portable electronics insurance may, in lieu of obtaining an appointment from an insurer or warranty association, obtain a single appointment from the associated lead business location licensee and pay the prescribed appointment fee under s. 624.501 if the lead business location has a single appointment from each insurer or warranty association represented and such appointment applies to the lead business location and all of its branch locations. Branch location appointments shall be renewed 24 months after the initial appointment date of the lead business location and every 24 months thereafter. Notwithstanding s. 624.501, the renewal fee applicable to such branch location appointments is $30 per appointment.

12. For purposes of this paragraph:

a. "Branch location" means any physical location in this state at which a licensee offers its products or services for sale.

b. "Portable electronics" means personal, self-contained, easily carried by an individual, battery-operated electronic communication, viewing, listening, recording, gaming, computing or global positioning devices, including cell or satellite phones, pagers, personal global positioning satellite units, portable computers, portable audio listening, video viewing or recording devices, digital cameras, video camcorders, portable gaming systems, docking stations, automatic answering devices, and other similar devices and their accessories, and service

related to the use of such devices.

c. "Portable electronics transaction" means the sale or lease of portable electronics or a related service, including portable electronics insurance.

Section 39. Subsection (5) of section 626.601, Florida Statutes, is amended to read:

626.601 Improper conduct; inquiry; fingerprinting.—

(5) If the department or office, after investigation, has reason to believe that an individual may have been found guilty of or pleaded guilty or nolo contendere to a felony or a crime related to the business of insurance in this or any other state or jurisdiction, the department or office may require the individual to file with the department or office a complete set of his or her fingerprints, in accordance with s. 626.171(4), which shall be accompanied by the fingerprint processing fee set forth in s. 624.501. The fingerprints shall be taken by an authorized law enforcement agency or other department-approved entity.

Section 40. Subsection (2) of section 626.7845, Florida Statutes, is amended to read:

626.7845 Prohibition against unlicensed transaction of life insurance.—

(2) Except as provided in s. 626.112(6), with respect to any line of authority specified in s. 626.015(13) ~~s. 626.015(12)~~, an individual may not, unless licensed as a life agent:

(a) Solicit insurance or annuities or procure applications;

(b) In this state, engage or hold himself or herself out as engaging in the business of analyzing or abstracting insurance

policies or of counseling or advising or giving opinions to persons relative to insurance or insurance contracts, unless the individual is:

1. A consulting actuary advising insurers;

2. An employee of a labor union, association, employer, or other business entity, or the subsidiaries and affiliates of each, who counsels and advises such entity or entities relative to their interests and those of their members or employees under insurance benefit plans; or

3. A trustee advising a settlor, a beneficiary, or a person regarding his or her interests in a trust, relative to insurance benefit plans; or

(c) In this state, from this state, or with a resident of this state, offer or attempt to negotiate on behalf of another person a viatical settlement contract as defined in s. 626.9911.

Section 41. Paragraph (d) of subsection (2) of section 626.8411, Florida Statutes, is amended, and paragraph (f) is added to subsection (1) of that section, to read:

626.8411 Application of Florida Insurance Code provisions to title insurance agents or agencies.—

(1) The following provisions applicable to general lines agents or agencies also apply to title insurance agents or agencies:

(f) Section 626.172(2)(f), relating to fingerprints.

(2) The following provisions of part I do not apply to title insurance agents or title insurance agencies:

(d) Section 626.172, except for paragraph (2)(f) of that section, relating to agent in full-time charge.

Section 42. Paragraph (b) of subsection (1) of section

626.8412, Florida Statutes, is amended to read:

626.8412 License and appointments required.—

(1) Except as otherwise provided in this part:

(b) A title insurance agent may not sell a title insurance policy issued by an insurer for which the agent and the agency do ~~does~~ not hold a current appointment.

Section 43. Paragraph (a) of subsection (3) of section 626.8417, Florida Statutes, is amended to read:

626.8417 Title insurance agent licensure; exemptions.—

(3) The department may not grant or issue a license as a title insurance agent to an individual who is found by the department to be untrustworthy or incompetent, who does not meet the qualifications for examination specified in s. 626.8414, or who does not meet the following qualifications:

(a) Within the 4 years immediately preceding the date of the application for license, the applicant must have completed a 40-hour ~~classroom~~ course in title insurance, 3 hours of which are on the subject matter of ethics, as approved by the department, or must have had at least 12 months of experience in responsible title insurance duties, under the supervision of a licensed title insurance agent, title insurer, or attorney while working in the title insurance business as a substantially full-time, bona fide employee of a title insurance agency, title insurance agent, title insurer, or attorney who conducts real estate closing transactions and issues title insurance policies but who is exempt from licensure under subsection (4). If an applicant’s qualifications are based upon the periods of employment at responsible title insurance duties, the applicant must submit, with the license application, an affidavit of the

applicant and of the employer affirming the period of such employment, that the employment was substantially full time, and giving a brief abstract of the nature of the duties performed by the applicant.

Section 44. Section 626.8421, Florida Statutes, is amended to read:

626.8421 Number of appointments permitted or required.—A title agent and a title agency shall be required to have a separate appointment as to each insurer by which they are ~~he or she is~~ appointed as agents ~~agent~~. As a part of each appointment there shall be a certified statement or affidavit of an appropriate officer or official of the appointing insurer stating that to the best of the insurer's knowledge and belief the applicant, or its principals in the case of a corporation or other legal entity, has met the requirements of s. 626.8417.

Section 45. Subsections (1) and (2) of section 626.843, Florida Statutes, are amended to read:

626.843 Renewal, continuation, reinstatement, termination of title insurance agent's and title insurance agency's appointments ~~appointment~~.—

(1) Appointments ~~the appointment~~ of a title insurance agent and a title insurance agency shall continue in force until suspended, revoked, or otherwise terminated, but subject to a renewed request filed by the insurer every 24 months after the original issue dates ~~date~~ of the appointments ~~appointment~~, accompanied by payments ~~payment~~ of the renewal appointment fees ~~fee~~ and taxes as prescribed in s. 624.501.

(2) Title insurance agent and title insurance agency appointments shall be renewed pursuant to s. 626.381 for

insurance representatives in general.

Section 46. Subsection (1) of section 626.8433, Florida Statutes, is amended to read:

626.8433 Filing of reasons for terminating appointment of title insurance agent and title insurance agency; confidential information.—

(1) Any title insurer that is terminating the appointment of a title insurance agent or title insurance agency, whether such termination is by direct action of the appointing title insurer or by failure to renew or continue the appointment as provided, shall file with the department a statement of the reasons, if any, for, and the facts relative to, such termination.

Section 47. Section 626.8447, Florida Statutes, is amended to read:

626.8447 Effect of suspension or revocation upon other licensees, appointees.—In case of the suspension or revocation of the license and appointment of any title insurance agent or title insurance agency, the licenses and appointments of all other title insurance agents who knowingly were parties to the act that ~~which~~ formed the ground for such suspension or revocation may likewise be suspended or revoked for the same period as that of the offending title insurance agent or title insurance agency, but such suspension or revocation does ~~shall~~ not prevent any title insurance agent, except the one whose license and appointment was first suspended or revoked, from being issued an appointment for some other title insurer.

Section 48. Subsection (10) of section 626.854, Florida Statutes, is amended to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(10)(a) If a public adjuster enters into a contract with an insured or claimant to reopen a claim or file a supplemental claim that seeks additional payments for a claim that has been previously paid in part or in full or settled by the insurer, the public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value based on a previous settlement or previous claim payments by the insurer for the same cause of loss. The charge, compensation, payment, commission, fee, or any other thing of value must be based only on the recovery allocated to the insured for covered damages, exclusive of attorney fees and costs, ~~claim payments or settlement~~ obtained through the work of the public adjuster after entering into the contract with the insured or claimant. Compensation for the reopened or supplemental claim may not exceed 20 percent of the reopened or supplemental claim payment. In no event shall the contracts described in this paragraph exceed the limitations in paragraph (b).

(b) A public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value in excess of:

1. Ten percent of the amount of insurance recovery allocated to the insured for covered damages, exclusive of attorney fees and costs, ~~claim payments made~~ by the insurer for claims based on events that are the subject of a declaration of

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a state of emergency by the Governor. This provision applies to claims made during the year after the declaration of emergency. After that year, the limitations in subparagraph 2. apply.

2. Twenty percent of the amount of insurance recovery allocated to the insured for covered damages, exclusive of attorney fees and costs, ~~claim payments made~~ by the insurer for claims that are not based on events that are the subject of a declaration of a state of emergency by the Governor.

(c) Insurance claim payments made by the insurer do not include policy deductibles, and public adjuster compensation may not be based on the deductible portion of a claim.

(d) Public adjuster compensation may not be based on amounts attributable to additional living expenses unless such compensation is affirmatively agreed to in a separate agreement that includes a disclosure in substantially the following form: "I agree to retain and compensate the public adjuster for adjusting my additional living expenses and securing payment from my insurer for amounts attributable to additional living expenses payable under the policy issued on my (home/mobile home/condominium unit)."

(e) Public adjuster compensation may not be increased based on a claim being resolved by litigation.

(f) Any maneuver, shift, or device through which the limits on compensation set forth in this subsection are exceeded is a violation of this chapter punishable as provided under s. 626.8698.

Section 49. Section 626.8561, Florida Statutes, is amended to read:

626.8561 "Public adjuster apprentice" defined.—The term

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"public adjuster apprentice" means a person licensed as an all-lines adjuster who:

(1) Is appointed and employed or contracted by ~~a public adjuster or~~ a public adjusting firm;

(2) Assists the ~~public adjuster or~~ public adjusting firm in ascertaining and determining the amount of any claim, loss, or damage payable under an insurance contract, or who undertakes to effect settlement of such claim, loss, or damage; and

(3) Satisfies the requirements of s. 626.8651.

Section 50. Paragraph (e) of subsection (1) and subsection (2) of section 626.865, Florida Statutes, are amended to read:

626.865 Public adjuster's qualifications, bond.—

(1) The department shall issue a license to an applicant for a public adjuster's license upon determining that the applicant has paid the applicable fees specified in s. 624.501 and possesses the following qualifications:

(e) Has been licensed and appointed in this state as a nonresident public adjuster on a continual basis for the previous 6 months, or has been licensed as an all-lines adjuster, and has been appointed on a continual basis for the previous 6 months as a public adjuster apprentice under s. 626.8561, as an independent adjuster under s. 626.855, or as a company employee adjuster under s. 626.856.

(2) At the time of application for license as a public adjuster, the applicant shall file with the department a bond executed and issued by a surety insurer authorized to transact such business in this state, in the amount of $50,000, conditioned for the faithful performance of his or her duties as a public adjuster under the license for which the applicant has

applied, and thereafter maintain the bond unimpaired throughout the existence of the license ~~and for at least 1 year after termination of the license~~.

(a) The bond must ~~shall~~ be in favor of the department and must ~~shall~~ specifically authorize recovery by the department of the damages sustained in case the licensee is guilty of fraud or unfair practices in connection with his or her business as public adjuster.

(b) The bond must remain in effect for 1 year after the expiration or termination of the license.

(c) The aggregate liability of the surety for all such damages may not ~~shall in no event~~ exceed the amount of the bond. The ~~Such~~ bond may ~~shall~~ not be terminated unless at least 30 days' written notice is given to the licensee and filed with the department.

Section 51. Paragraph (a) of subsection (1) and subsection (3) of section 626.8651, Florida Statutes, are amended to read:

626.8651 Public adjuster apprentice appointment; qualifications.—

(1)(a) The department shall issue an appointment as a public adjuster apprentice to a licensee who:

1. Is licensed as an all-lines adjuster under s. 626.866;

2. Has filed with the department a bond executed and issued by a surety insurer that is authorized to transact such business in this state in the amount of $50,000, which is conditioned upon the faithful performance of his or her duties as a public adjuster apprentice; and

3. Maintains such bond unimpaired throughout the existence of the appointment. The bond must remain in effect for 1 year

after the expiration or termination of the license ~~and for at least 1 year after termination of the appointment~~.

(3) A public adjuster apprentice has the same authority as the licensed public adjuster or public adjusting firm that employs the apprentice except that an apprentice may not execute contracts for the services of a public adjuster or public adjusting firm. An individual may not be, act as, or hold himself or herself out to be a public adjuster apprentice unless the individual is licensed as an all-lines adjuster and holds a current appointment by a licensed ~~public all-lines adjuster or a~~ public adjusting firm that has designated with the department a primary ~~employs a licensed public~~ adjuster as required by s. 626.8695.

Section 52. Section 626.8696, Florida Statutes, is amended to read:

626.8696 Application for adjusting firm license.—

(1) The application for an adjusting firm license must include:

(a) The name of each majority owner, partner, officer, and director of the adjusting firm.

(b) The resident address of each person required to be listed in the application under paragraph (a).

(c) The name of the adjusting firm and its principal business address.

(d) The location of each adjusting firm office and the name under which each office conducts or will conduct business.

(e) The name and license number of the designated primary adjuster for each adjusting firm location as required in s. 626.8695.

(f) The fingerprints of each individual required to be listed in the application under paragraph (a), filed in accordance with s. 626.171(4). However, fingerprints need not be filed for an individual who is currently licensed and appointed under this chapter.

(g) Any additional information that the department requires.

(2) An application for an adjusting firm license must be signed by one of the individuals required to be listed in the application under paragraph (1)(a) ~~each owner of the firm. If the firm is incorporated, the application must be signed by the president and secretary of the corporation~~.

~~(3) Each application must be accompanied by payment of any applicable fee as prescribed in s. 624.501.~~

~~(4) License fees are not refundable.~~

~~(5) An adjusting firm required to be licensed pursuant to s. 626.8695 must remain so licensed for a period of 3 years from the date of licensure, unless the license is suspended or revoked. The department may suspend or revoke the adjusting firm's authority to do business for activities occurring during the time the firm is licensed, regardless of whether the licensing period has terminated.~~

Section 53. Subsection (3) of section 626.8732, Florida Statutes, is amended to read:

626.8732 Nonresident public adjuster's qualifications, bond.—

(3) At the time of application for license as a nonresident public adjuster, the applicant shall file with the department a bond executed and issued by a surety insurer authorized to

transact surety business in this state, in the amount of $50,000, conditioned for the faithful performance of his or her duties as a nonresident public adjuster under the license applied for. Thereafter, the applicant shall maintain the bond unimpaired throughout the existence of the license and for 1 year after the expiration or termination of the license.

(a) The bond must be in favor of the department and must specifically authorize recovery by the department of the damages sustained if the licensee commits fraud or unfair practices in connection with his or her business as nonresident public adjuster.

(b) The aggregate liability of the surety for all the damages may not exceed the amount of the bond. The bond may not be terminated unless at least 30 days' written notice is given to the licensee and filed with the department.

Section 54. Paragraph (a) of subsection (2) of section 626.8734, Florida Statutes, is amended to read:

626.8734 Nonresident all-lines adjuster license qualifications.—

(2) The applicant must furnish the following with his or her application:

(a) A complete set of his or her fingerprints in accordance with s. 626.171(4). ~~The applicant's fingerprints must be certified by an authorized law enforcement officer.~~

Section 55. Section 626.906, Florida Statutes, is amended to read:

626.906 Acts constituting Chief Financial Officer as process agent.—Any of the following acts in this state, effected by mail or otherwise, by an unauthorized foreign insurer, alien

insurer, or person representing or aiding such an insurer is equivalent to and shall constitute an appointment by such insurer or person representing or aiding such insurer of the Chief Financial Officer to be its true and lawful agent ~~attorney~~, upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary, arising out of any such contract of insurance; and any such act shall be signification of the insurer's or person's agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer or person representing or aiding such insurer:

(1) The issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein;

(2) The solicitation of applications for such contracts;

(3) The collection of premiums, membership fees, assessments, or other considerations for such contracts; or

(4) Any other transaction of insurance.

Section 56. Subsection (4) of section 626.912, Florida Statutes, is amended to read:

626.912 Exemptions from ss. 626.904-626.911.—The provisions of ss. 626.904-626.911 do not apply to any action, suit, or proceeding against any unauthorized foreign insurer, alien insurer, or person representing or aiding such an insurer arising out of any contract of insurance:

(4) Issued under and in accordance with the Surplus Lines Law, when such insurer or person representing or aiding such insurer enters a general appearance or when such contract of

insurance contains a provision designating the Chief Financial Officer or designating a Florida resident agent to be the true and lawful agent ~~attorney~~ of such unauthorized insurer or person representing or aiding such insurer upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or person representing or aiding such insurer or beneficiary arising out of any such contract of insurance; and service of process effected on such Chief Financial Officer or such resident agent shall be deemed to confer complete jurisdiction over such unauthorized insurer or person representing or aiding such insurer in such action.

Section 57. Subsections (3) and (4) of section 626.937, Florida Statutes, are amended to read:

626.937 Actions against insurer; service of process.—

(3) Each unauthorized insurer requesting eligibility pursuant to s. 626.918 shall file with the department its appointment of the Chief Financial Officer, on a form as furnished by the department, as its agent ~~attorney~~ to receive service of all legal process issued against it in any civil action or proceeding in this state, and agreeing that process so served shall be valid and binding upon the insurer. The appointment shall be irrevocable, shall bind the insurer and any successor in interest as to the assets or liabilities of the insurer, and shall remain in effect as long as there is outstanding in this state any obligation or liability of the insurer resulting from its insurance transactions therein.

(4) At the time of such appointment of the Chief Financial Officer as its process agent, the insurer shall file with the department designation of the name and e-mail address of the

person to whom process against it served upon the Chief Financial Officer is to be made available through the department's secure online portal ~~forwarded~~. The insurer may change the designation at any time by a new filing.

Section 58. Subsection (5) of section 626.9953, Florida Statutes, is amended to read:

626.9953 Qualifications for registration; application required.—

(5) An applicant must submit a set of his or her fingerprints in accordance with s. 626.171(4) ~~to the department and pay the processing fee established under s. 624.501(23)~~. The department shall submit the applicant's fingerprints to the Department of Law Enforcement for processing state criminal history records checks and local criminal records checks through local law enforcement agencies and for forwarding to the Federal Bureau of Investigation for national criminal history records checks. The fingerprints shall be taken by a law enforcement agency, a designated examination center, or another department-approved entity. The department may not approve an application for registration as a navigator if fingerprints have not been submitted.

Section 59. Paragraphs (e) and (f) are added to subsection (4) of section 633.135, Florida Statutes, to read:

633.135 Firefighter Assistance Grant Program.—

(4) Funds shall be used to:

(e) Purchase other equipment and tools that improve firesafety and fire rescue capabilities for firefighters.

(f) Purchase protective clothing and equipment compliant with NFPA 1977, "Standard on Protective Clothing and Equipment

for Wildland Fire Fighting and Urban Interface Fire Fighting."

Section 60. Subsections (4) and (5) of section 633.216, Florida Statutes, are amended to read:

633.216 Inspection of buildings and equipment; orders; firesafety inspection training requirements; certification; disciplinary action.—The State Fire Marshal and her or his agents or persons authorized to enforce laws and rules of the State Fire Marshal shall, at any reasonable hour, when the State Fire Marshal has reasonable cause to believe that a violation of this chapter or s. 509.215, or a rule adopted thereunder, or a minimum firesafety code adopted by the State Fire Marshal or a local authority, may exist, inspect any and all buildings and structures which are subject to the requirements of this chapter or s. 509.215 and rules adopted thereunder. The authority to inspect shall extend to all equipment, vehicles, and chemicals which are located on or within the premises of any such building or structure.

(4) Every firesafety inspector certificate is valid for a period of 4 years from the date of issuance. Renewal of certification is subject to the affected person's completing proper application for renewal and meeting all of the requirements for renewal as established under this chapter or by rule adopted under this chapter, which must include completion of at least 54 hours during the preceding 4-year period of continuing education as required by the rule of the department ~~or, in lieu thereof, successful passage of an examination as established by the department~~.

~~(5) A previously certified firesafety inspector whose certification has lapsed for 8 years or more must repeat the~~

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~~fire safety inspector training as specified by the division.~~

Section 61. Paragraph (b) of subsection (4) and paragraphs (a) and (c) of subsection (6) of section 633.408, Florida Statutes, are amended to read:

633.408 Firefighter and volunteer firefighter training and certification.—

(4) The division shall issue a Firefighter Certificate of Compliance to an individual who does all of the following:

(b) Passes the Minimum Standards Course certification ~~examination~~ within 12 months after completing the required courses.

(6)(a) The division may issue a Special Certificate of Compliance to an individual who does all of the following:

1. Satisfactorily completes the course established by rule by the division and successfully passes any examination corresponding to such course ~~in paragraph (1)(b)~~ to obtain a Special Certificate of Compliance.

2. ~~Passes the examination established in paragraph (1)(b) to obtain a Special Certificate of Compliance.~~

~~3.~~ Possesses the qualifications in s. 633.412.

~~(c) In order to retain a Special Certificate of Compliance, every 4 years an individual must:~~

~~1. Be active as a firefighter;~~

~~2. Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the division, which proof must be registered in an electronic database designated by the division; or~~

~~3. Within 6 months before the 4-year period expires,~~

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~~successfully complete a Firefighter Retention Refresher Course consisting of a minimum of 40 hours of training as prescribed by rule.~~

Section 62. Subsections (1) and (4) of section 633.414, Florida Statutes, are amended to read:

633.414 Retention of firefighter and volunteer firefighter certifications.—

(1) In order for a firefighter to retain her or his Firefighter Certificate of Compliance or Special Certificate of Compliance, every 4 years he or she must meet the requirements for renewal provided in this chapter and by rule, which must include at least one of the following:

(a) Be active as a firefighter. As used in this section, the term "active" means being employed as a firefighter or providing service as a volunteer firefighter as evidenced by the individual's name appearing on a fire service provider's employment roster in the Florida State Fire College database or a letter by the fire service provider attesting to dates of employment.

(b) Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the division, which proof must be registered in an electronic database designated by the division.

(c) Before the expiration of the certificate ~~Within 6 months before the 4-year period expires~~, successfully complete a Firefighter Retention Refresher Course consisting of a minimum of 40 hours of training to be prescribed by rule.

(d) Before the expiration of the certificate ~~Within 6~~

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~~months before the 4-year period expires~~, successfully retake and pass the Minimum Standards Course examination pursuant to s. 633.408.

~~(4) For the purposes of this section, the term "active" means being employed as a firefighter or providing service as a volunteer firefighter for a cumulative period of 6 months within a 4-year period.~~

The 4-year period may, in the discretion of the department, be extended to 12 months after discharge from military service if the military service does not exceed 3 years, but in no event more than 6 years from the date of issue or renewal, if applicable, for an honorably discharged veteran of the United States Armed Forces or the spouse of such a veteran. A qualified individual must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran is honorably discharged.

Section 63. Subsection (4) of section 648.34, Florida Statutes, is amended to read:

648.34 Bail bond agents; qualifications.—

(4) The applicant shall furnish, with his or her application, a complete set of his or her fingerprints in accordance with s. 626.171(4) and a recent credential-sized, fullface photograph of the applicant. ~~The applicant's fingerprints shall be certified by an authorized law enforcement officer.~~ The department shall not authorize an applicant to take

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the required examination until the department has received a report from the Department of Law Enforcement and the Federal Bureau of Investigation relative to the existence or nonexistence of a criminal history report based on the applicant's fingerprints.

Section 64. Subsection (4) of section 648.355, Florida Statutes, is amended to read:

648.355 Temporary limited license as limited surety agent or professional bail bond agent; pending examination.—

(4) The applicant shall furnish, with the application for temporary license, a complete set of the applicant's fingerprints in accordance with s. 626.171(4) and a recent credential-sized, fullface photograph of the applicant. ~~The applicant's fingerprints shall be certified by an authorized law enforcement officer.~~ The department shall not issue a temporary license under this section until the department has received a report from the Department of Law Enforcement and the Federal Bureau of Investigation relative to the existence or nonexistence of a criminal history report based on the applicant's fingerprints.

Section 65. Subsection (4) is added to section 648.46, Florida Statutes, to read:

648.46 Procedure for disciplinary action against licensees.—

(4) The expiration, nonrenewal, or surrender of licensure under this chapter does not eliminate the jurisdiction of the licensing authority to investigate and prosecute for a violation committed by a licensee while licensed under this chapter. The prosecution of any matter may be initiated or continued

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notwithstanding the withdrawal of a complaint.

Section 66. Paragraph (d) of subsection (2) and paragraphs (b), (c), and (e) of subsection (3) of section 766.105, Florida Statutes, are amended, and paragraph (i) is added to subsection (3) and subsection (4) is added to that section, to read:

766.105 Florida Patient's Compensation Fund.—

(2) COVERAGE.—

(d)1. Any health care provider who participates in the fund and who does not meet the provisions of paragraph (b) shall not be covered by the fund.

2. Annually, the Agency for Health Care Administration shall require documentation by each hospital that such hospital is in compliance, and will remain in compliance, with the provisions of this section. ~~The agency shall review the documentation and then deliver the documentation to the board of governors. At least 60 days before the time a license will be issued or renewed, the agency shall request from the board of governors a certification that each hospital is in compliance with the provisions of this section. The board of governors shall not be liable under the law for any erroneous certification. The agency may not issue or renew the license of any hospital which has not been certified by the board of governors. The license of any hospital that fails to remain in compliance or fails to provide such documentation shall be revoked or suspended by the agency.~~

(3) THE FUND.—

(b) *Fund administration and operation.*—

1. The fund shall operate subject to the supervision and approval of the Chief Financial Officer or his or her designee ~~a~~

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~~board of governors consisting of a representative of the insurance industry appointed by the Chief Financial Officer, an attorney appointed by The Florida Bar, a representative of physicians appointed by the Florida Medical Association, a representative of physicians' insurance appointed by the Chief Financial Officer, a representative of physicians' self-insurance appointed by the Chief Financial Officer, two representatives of hospitals appointed by the Florida Hospital Association, a representative of hospital insurance appointed by the Chief Financial Officer, a representative of hospital self-insurance appointed by the Chief Financial Officer, a representative of the osteopathic physicians' or podiatric physicians' insurance or self-insurance appointed by the Chief Financial Officer, and a representative of the general public appointed by the Chief Financial Officer. The board of governors shall, during the first meeting after June 30 of each year, choose one of its members to serve as chair of the board and another member to serve as vice chair of the board. The members of the board shall be appointed to serve terms of 4 years, except that the initial appointments of a representative of the general public by the Chief Financial Officer, an attorney by The Florida Bar, a representative of physicians by the Florida Medical Association, and one of the two representatives of the Florida Hospital Association shall be for terms of 3 years; thereafter, such representatives shall be appointed for terms of 4 years. Subsequent to initial appointments for 4-year terms, the representative of the osteopathic physicians' or podiatric physicians' insurance or self-insurance appointed by the Chief Financial Officer and the representative of hospital self-**

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~~insurance appointed by the Chief Financial Officer shall be appointed for 2-year terms; thereafter, such representatives shall be appointed for terms of 4 years. Each appointed member may designate in writing to the chair an alternate to act in the member's absence or incapacity. A member of the board, or the member's alternate, may be reimbursed from the assets of the fund for expenses incurred by him or her as a member, or alternate member, of the board and for committee work, but he or she may not otherwise be compensated by the fund for his or her service as a board member or alternate.~~

2. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the fund or its agents or employees, professional advisers or consultants, the Chief Financial Officer or his or her designee ~~members of the board of governors or their alternates~~, or the Department of Financial Services or the Office of Insurance Regulation of the Financial Services Commission or their representatives for any action taken by them in the performance of their powers and duties pursuant to this section.

(c) *Powers of the fund.*—The fund has the power to:

1. Sue and be sued, and appear and defend, in all actions and proceedings in its name to the same extent as a natural person.

2. Adopt, change, amend, and repeal a plan of operation, not inconsistent with law, for the regulation and administration of the affairs of the fund. The plan and any changes thereto shall be filed with the Office of Insurance Regulation of the Financial Services Commission and are all subject to its approval before implementation by the fund. All fund members,

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board members, and employees shall comply with the plan of operation.

3. Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the fund is created.

4. Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this section.

5. Employ or retain such persons as are necessary to perform the administrative and financial transactions and responsibilities of the fund and to perform other necessary or proper functions unless prohibited by law.

6. Take such legal action as may be necessary to avoid payment of improper claims.

7. Indemnify any ~~employee, agent, member of the board of governors or his or her alternate, or~~ person acting on behalf of the fund in an official capacity, for expenses, including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with any action, suit, or proceeding, including any appeal thereof, arising out of his or her capacity in acting on behalf of the fund, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the fund and, with respect to any criminal action or proceeding, he or she had reasonable cause to believe his or her conduct was lawful.

(e) *Fund accounting and audit.*—

1. Money shall be withdrawn from the fund only upon a voucher as authorized by the Chief Financial Officer or his or her designee ~~board of governors~~.

2. All books, records, and audits of the fund shall be open

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for reasonable inspection to the general public, except that a claim file in possession of the fund, fund members, and their insurers is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until termination of litigation or settlement of the claim, although medical records and other portions of the claim file may remain confidential and exempt as otherwise provided by law. Any book, record, document, audit, or asset acquired by, prepared for, or paid for by the fund is subject to the authority of the Chief Financial Officer or his or her designee ~~board of governors~~, which shall be responsible therefor.

3. Persons authorized to receive deposits, issue vouchers, or withdraw or otherwise disburse any fund moneys shall post a blanket fidelity bond in an amount reasonably sufficient to protect fund assets. The cost of such bond shall be paid from the fund.

4. Annually, the fund shall furnish, upon request, audited financial reports to any fund participant and to the Office of Insurance Regulation and the Joint Legislative Auditing Committee. The reports shall be prepared in accordance with accepted accounting procedures and shall include income and such other information as may be required by the Office of Insurance Regulation or the Joint Legislative Auditing Committee.

5. Any money held in the fund shall be invested in interest-bearing investments ~~by the board of governors of the fund as administrator~~. However, in no case may any such money be invested in the stock of any insurer participating in the Joint Underwriting Association authorized by s. 627.351(4) or in the parent company of, or company owning a controlling interest in,

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such insurer. All income derived from such investments shall be credited to the fund.

6. Any health care provider participating in the fund may withdraw from such participation only at the end of a fiscal year; however, such health care provider shall remain subject to any assessment or any refund pertaining to any year in which such member participated in the fund.

(i) *Dissolution of the fund.*—The fund shall operate subject to the supervision of the Chief Financial Officer or his or her designee, pursuant to the policies and procedures and under the auspices of the Department of Financial Services, Division of Rehabilitation and Liquidation, until the department executes a legal dissolution of the fund on or before December 31, 2023. Before the legal dissolution of the fund, the Department of Financial Services must:

1. Obtain all existing records and retain necessary records of the fund pursuant to law.

2. Identify all remaining property held by the fund and attempt to return such property to its owners and, for property that cannot be returned to the owner, transfer such property to the Department of Financial Services, Division of Unclaimed Property.

3. Make a final accounting of the finances of the fund.

4. Ensure that the fund has met all its obligations pursuant to structured settlements, annuities, or other instruments established to pay covered claims, and, if the fund has not done so, attempt to meet such obligations before final and complete dissolution of the fund.

5. Sell or otherwise dispose of all physical assets of the

fund.

6. Execute a legal dissolution of the fund.

7. Transfer any remaining money or assets of the fund to the Chief Financial Officer for deposit in the General Revenue Fund.

(4) REPEAL.—This section is repealed January 1, 2024.

Section 67. Paragraph (b) of subsection (1) of section 945.6041, Florida Statutes, is amended to read:

945.6041 Inmate medical services.—

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

(b) "Health care provider" means:

1. A hospital licensed under chapter 395.

2. A physician or physician assistant licensed under chapter 458.

3. An osteopathic physician or physician assistant licensed under chapter 459.

4. A podiatric physician licensed under chapter 461.

5. A health maintenance organization certificated under part I of chapter 641.

6. An ambulatory surgical center licensed under chapter 395.

7. A professional association, partnership, corporation, joint venture, or other association established by the individuals set forth in subparagraphs 2., 3., and 4. for professional activity.

8. Other medical facility.

a. As used in this subparagraph, the term "other medical facility" means:

(I) A facility the primary purpose of which is to provide

human medical diagnostic services, or a facility providing nonsurgical human medical treatment which discharges patients on the same working day that the patients are admitted; and

(II) A facility that is not part of a hospital.

b. The term does not include a facility existing for the primary purpose of performing terminations of pregnancy, or an office maintained by a physician or dentist for the practice of medicine ~~has the same meaning as provided in s. 766.105~~.

Section 68. Paragraph (a) of subsection (1) of section 985.6441, Florida Statutes, is amended to read:

985.6441 Health care services.—

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

(a) "Health care provider" means:

1. A hospital licensed under chapter 395.

2. A physician or physician assistant licensed under chapter 458.

3. An osteopathic physician or physician assistant licensed under chapter 459.

4. A podiatric physician licensed under chapter 461.

5. A health maintenance organization certificated under part I of chapter 641.

6. An ambulatory surgical center licensed under chapter 395.

7. A professional association, partnership, corporation, joint venture, or other association established by the individuals set forth in subparagraphs 2., 3., and 4. for professional activity.

8. Other medical facility.

a. As used in this subparagraph, the term "other medical

facility" means:

(I) A facility the primary purpose of which is to provide human medical diagnostic services, or a facility providing nonsurgical human medical treatment which discharges patients on the same working day that the patients are admitted; and

(II) A facility that is not part of a hospital.

b. The term does not include a facility existing for the primary purpose of performing terminations of pregnancy, or an office maintained by a physician or dentist for the practice of medicine ~~has the same meaning as provided in s. 766.105~~.

Section 69. All powers, duties, functions, records, offices, personnel, associated administrative support positions, property, pending issues, existing contracts, administrative authority, and administrative rules relating to the Stop Inmate Fraud Program within the Department of Financial Services are transferred by a type two transfer as defined in s. 20.06(2), Florida Statutes, to the Department of Economic Opportunity.

Section 70. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2022.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1940
INTRODUCER:	Environment and Natural Resources Committee and Senator Brodeur
SUBJECT:	Statewide Flooding and Sea Level Rise Resilience
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Rogers	EN	**Fav/CS**
2.	Reagan	Betta	AEG	**Recommend: Favorable**
3.	Reagan	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1940 establishes the Statewide Office of Resilience (office) within the Executive Office of the Governor. The bill provides that the office must be headed by a Chief Resilience Officer, who is appointed by and serves at the pleasure of the Governor.

The bill requires the Department of Transportation (DOT) to develop a resilience action plan for the State Highway System. The bill identifies goals of the action plan and requires it to include certain components. It also requires the DOT to submit the action plan to the Governor and the Legislature by June 20, 2023, and a status report every third year on June 30 thereafter.

The bill makes various revisions to section 380.093, Florida Statutes, relating to statewide resiliency funding and planning, including:

- Authorizing the use of Resilient Florida Grant Program funds to fund preconstruction activities for Statewide Flooding and Sea Level Rise Resilience Plan (plan) projects in municipalities and counties meeting certain population thresholds, but not for projects that adapt critical assets to flooding and sea level rise;
- Pushing back by one year (to 2023 and 2024, respectively) the dates by which the Comprehensive Statewide Flood Vulnerability and Sea Level Rise Data Set and Assessment must be completed; and
- Revising the $100 million cap on funding proposed for each year of the plan to a minimum threshold of $100 million.

The bill requires the Florida Flood Hub for Applied Research and Innovation to provide certain data to counties and municipalities for vulnerability assessments.

Beginning January 1, 2023, the bill also directs surveyors and mappers to submit digital copies of the elevation certificates they complete to the Division of Emergency Management (DEM) as outlined on the DEM's website.

The bill will likely cause the DOT to incur costs associated with developing the required resilience action plan for the State Highway System.

II. Present Situation:

Chief Resilience Officer

In January of 2019, Governor DeSantis issued Executive Order 19-12, creating the Office of Resilience and Coastal Protection to help prepare Florida's coastal communities and habitats for impacts from sea-level rise by providing funding, technical assistance, and coordination among state, regional, and local entities.[1] This office oversees a broad range of state programs.[2]

In August of 2019, the Governor appointed Florida's first Chief Resilience Officer (CRO), Dr. Julia Nesheiwat. The CRO reports directly to the Executive Office of the Governor and is tasked with preparing Florida for the environmental, physical, and economic impacts of sea level rise.[3]

In February of 2020, Dr. Nesheiwat stepped down as the CRO. Former Secretary of the Department of Environmental Protection (DEP), Noah Valenstein, served as the interim CRO until he resigned in May 2021. The current Secretary of the DEP, Shawn Hamilton, served as the CRO until Governor DeSantis appointed Wesley Brooks, the current CRO, in November 2021.[4]

Statewide Resilience Programs

Department of Environmental Protection Programs

In 2021, the Legislature, recognizing that Florida is vulnerable to flooding from increasing rainfall, storm surge, and sea level rise, established several statewide resilience programs administered by the DEP.[5] Those programs include the following:

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[1] State of Florida, Office of the Governor, *Executive Order Number 19-12*, 5 (2019), *available at* https://www.flgov.com/wp-content/uploads/2019/01/EO-19-12-.pdf (last visited Jan. 26, 2022).
[2] Dep't of Environmental Protection (DEP), *Office of Resilience and Coastal Protection*, https://floridadep.gov/rcp (last visited Jan. 26, 2022).
[3] *See* Governor Ron DeSantis, News Releases, *Governor Ron DeSantis Announces Dr. Julia Nesheiwat as Florida's First Chief Resilience Officer* (Aug. 1, 2019), https://flgov.com/2019/08/01/governor-ron-desantis-announces-dr-julia-nesheiwat-as-floridas-first-chief-resilience-officer/ (last visited Jan. 26, 2022).
[4] Governor Ron DeSantis, New Releases, *Governor DeSantis Announces Four Key Appointments to His Administration* (Nov. 19, 2021), https://www.flgov.com/2021/11/19/governor-desantis-announces-four-key-appointments-to-his-administration/ (last visited Jan. 26, 2022); Renzo Downey, "After 20 months of uncertainty, Gov. DeSantis names Wesley Brooks as Chief Resilience Officer," FLORIDA POLITICS, *available at* https://floridapolitics.com/archives/474849-after-20-months-of-uncertainty-gov-desantis-names-wesley-brooks-as-chief-resilience-officer/ (last visited Jan. 26, 2022).
[5] Sections 380.093, 380.0933, 403.928(4), F.S.; *see* ch. 2021-28, Laws of Fla.

- The DEP's Resilient Florida Grant Program provides grants to counties or municipalities for community resilience planning, such as vulnerability assessments, plan development, and projects to adapt critical assets.[6] The findings of the assessments must be reported to the DEP.
- The Comprehensive Statewide Flood Vulnerability and Sea Level Rise Data Set and Assessment, which must be updated at least every five years. The DEP must:
  - By July 1, 2022, develop a statewide data set, including statewide sea level rise projections, containing information necessary to determine the risks of flooding and sea level rise to inland and coastal communities; and
  - By July 1, 2023, develop a statewide assessment, using the statewide data set, identifying vulnerable infrastructure, geographic areas, and communities. The statewide assessment must include an inventory of critical assets.
- The Statewide Flooding and Sea Level Rise Resilience Plan. By each December 1, the DEP must develop the plan on a three-year planning horizon and submit it to the Governor and Legislature. The plan must consist of ranked projects addressing the risks of flooding and sea level rise to communities in the state. The funding proposed in the plan may not exceed $100 million in one year and is subject to review and appropriation by the Legislature. Each project must have a minimum 50 percent cost-share, unless it assists or is within a financially disadvantaged small community.[7] Counties, municipalities, and regional resilience entities[8] are authorized to submit to the DEP lists of proposed projects for inclusion, and water management districts and flood control districts are authorized to submit to the DEP lists of proposed projects specifically relating to water supplies or water resources for inclusion.[9] The DEP must assess projects for inclusion by implementing a four-tiered scoring system.[10]

Department of Transportation Programs

The Department of Transportation (DOT) regulates access to the facilities forming part of the State Highway System.[11] The Florida Transportation Code[12] defines the State Highway System[13] as meaning:

- The interstate system and all other roads within the state which were under the jurisdiction of the state on June 10, 1995;
- Roads constructed by an agency of the state for the State Highway System; and

[6] Section 380.093(2)(a), F.S. "Critical asset" is defined to include broad lists of assets relating to transportation, critical infrastructure, emergency facilities, natural resources, and historical and cultural resources.
[7] Section 380.093(5)(e), F.S. "Financially Disadvantaged Small Community," for purposes of s. 380.093, F.S., is defined as a municipality with a population of 10,000 or fewer and a per capita annual income that is less than the state's per capita annual income, or a county with a population of 50,000 or fewer and a per capita annual income that is less than the state's per capita annual income.
[8] Section 380.093(6), F.S. The bill authorizes the DEP to provide funding, subject to specific legislative appropriation, to regional resilience entities for providing technical assistance to counties and municipalities, coordinating multijurisdictional vulnerability assessments, and developing project proposals for the statewide resilience plan.
[9] Section 380.093(5)(d), F.S.
[10] Section 380.093(5)(h), F.S.
[11] Section 334.03(24), F.S.
[12] Chapters 334-339, 341, 348, and 349, F.S., and ss. 332.003-332.007, 351.35, 351.36, 351.37, and 861.011, F.S. *See* s. 334.01, F.S., (identifying the chapters and sections of the Florida Statutes that may be cited as the Florida Transportation Code).
[13] Section 334.03(24), F.S.

- Roads transferred into the state's jurisdiction after June 10, 1995 by mutual consent with another governmental entity, but not including roads transferred out of the state's jurisdiction in the same way.[14]

In April 2020, Secretary of the DOT Kevin Thibault signed Policy 000-525-053,[15] entitled Resiliency of State Transportation Infrastructure (Resiliency Policy), to make it the official policy of the DOT to consider the resiliency of the state's transportation system to support the safety, mobility, quality of life, and economic prosperity of Florida and to preserve the quality of its environment and communities.[16]

The Resiliency Policy recognizes that resiliency includes the ability of the transportation system to adapt to changing conditions and prepare for, withstand, and recover from disruption. To that end, the DOT has pledged to:[17]

- Continue to identify risks, particularly related to sea level rise, flooding, and storms; assess potential impacts; and employ strategies to avoid, mitigate, or eliminate impacts;
- Collaborate with appropriate agencies and organizations for information sharing and alignment of resiliency strategies; and
- Implement the Resiliency Policy through the DOT's long-range and modal plans; work program; asset management plans; research efforts; and internal manuals, tools, guidelines, procedures, and related documents, guiding planning, programming, project development, design, construction, operations, and maintenance.[18]

Consistent with its Resiliency Policy, the DOT is doing all of the following to advance resiliency:[19]

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[14] *Id.*

[15] Dep't of Transportation (DOT), *Resiliency of State Transportation Infrastructure, Topic No. 000-525-053* (Apr. 27, 2020), *available at* https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/planning/policy/resilience/resiliency_policy_000-525-053.pdf?sfvrsn=4dae64fd_2 (last visited Jan. 28, 2022). The U.S. Department of Transportation, Federal Highway Administration (FHWA), has also issued an order directing FHWA to integrate consideration of climate change and extreme weather event impacts and adaptation responses into the delivery and stewardship of the Federal aid and Federal Lands Highway programs. This includes encouraging state departments of transportation and other agencies to develop, prioritize, implement, and evaluate risk-based and cost-effective strategies to minimize climate and extreme weather risks and protect critical infrastructure using the best available science, technology, and information. *See* U.S. Dep't of Transportation, Federal Highway Administration, *Transportation System Preparedness and Resilience to Climate Change and Extreme Weather Events, Order 5520* (Dec. 15, 2014), *available at* https://www.fhwa.dot.gov/legsregs/directives/orders/5520.pdf (last visited Jan. 31, 2022).

[16] *Id.*

[17] DOT, *Resiliency of State Transportation Infrastructure, Topic No. 000-525-053* (Apr. 27, 2020), *available at* https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/planning/policy/resilience/resiliency_policy_000-525-053.pdf?sfvrsn=4dae64fd_2 (last visited Jan. 28, 2022).

[18] *Id.*

[19] DOT, *Resiliency Subject Brief*, 2, *available at* https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/planning/policy/briefing-sheets/briefing_sheets_resilience_0630.pdf?sfvrsn=1173ebf_2 (last visited Jan. 28, 2022).

- Incorporating resiliency in statewide planning efforts including the Florida Transportation Plan,[20] Strategic Intermodal System (SIS) Policy Plan,[21] Freight Mobility and Trade Plan,[22] and Transportation Asset Management Plan;[23]
- Providing resources such as the Resilience Quick Guide[24] for incorporating resiliency into Metropolitan Planning Organizations' (MPOs') long range plans and the Resilience Primer that establishes a process framework, documents industry best practices, and provides a resiliency toolbox;[25]
- Laying the groundwork for a SIS Resilience Action Plan as part of phase II of a vulnerability assessment for Florida's high priority transportation facilities;
- Developing and coordinating training for the Sea Level Scenario Sketch Planning Tool[26] to aid the assessment of potential long-range sea level rise impacts on transportation infrastructure;
- Designing for rising sea levels and tidal issues by analyzing projected sea levels and tides in the design of bridge replacement projects and incorporating closed drainage system upgrades and backflow devices into coastal projects;
- Supporting research activities that provide a better understanding of the impacts and potential responses to sea level rise, tidal flooding, and other stresses and shocks;
- Managing infrastructure assets like roadway pavements through analysis and implementation of methods that address environmental conditions such as extreme heat; and
- Safeguarding information technology through an agency-wide team established to ensure the protection of critical data and network resources from cyberattacks and other threats.[27]

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[20] DOT, *Florida Transportation Plan (FTP), available at* http://floridatransportationplan.com/index.htm (last visited Jan. 29, 2022). The Florida Transportation Plan is the single overarching plan guiding Florida's transportation future. Updated every five years, it is a collaborative effort of state, regional, and local transportation partners in the public and private sectors.

[21] DOT, *Strategic Intermodal System Policy Plan* (Mar. 2016), *available at* https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/content/planning/systems/programs/mspi/plans/sis-policyplan.pdf?sfvrsn=4d7341ad_0 (last visited Jan. 29, 2022). The Strategic Intermodal System Policy Plan establishes the policy framework for planning and managing Florida's Strategic Intermodal System, the high priority network of transportation facilities important to the state's economic competitiveness. *Id.* at ii.

[22] DOT, *Freight Mobility and Trade Plan* (2020), *available at* https://www.fdot.gov/fmtp (last visited Jan. 29, 2022).

[23] DOT, *Transportation Asset Management Plan* (2015), *available at* https://www.fdot.gov/docs/default-source/planning/tamp/TAMP-2015.pdf (last visited Jan. 29, 2022).

[24] DOT, *Resilience Quick Guide: Incorporating Resilience in the MPO Long Range Transportation Plan*, 2 (2020), *available at* http://www.floridatransportationplan.com/pdf/2020-01-29_FDOT%20Resilience%20Quick%20Start%20Guide_FINAL.pdf (last visited Jan. 26, 2022). The purpose of the Quick Guide is to help MPOs improve the resiliency and reliability of the transportation system and reduce or mitigate stormwater impacts of surface transportation in the long-range transportation planning process. Florida MPOs must consider resilience as a planning factor when assessing projects, strategies, and services during development of their Long Range Transportation Plans (LRTPs). The Quick Guide outlines the steps for MPOs to consider throughout the development of the LRTP.

[25] DOT, *Resiliency Subject Brief*, 2, *available at* https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/planning/policy/briefing-sheets/briefing_sheets_resilience_0630.pdf?sfvrsn=1173ebf_2 (last visited Jan. 28, 2022). MPOs must, in cooperation with the state and public transportation operators, "[i]mprove the resilience and reliability of the transportation system and reduce or mitigate stormwater impacts of surface transportation" in the long range transportation planning process. *See id; see also* 23 C.F.R. s. 450.306(b)(9).

[26] University of Florida GeoPlan Center, *Sea Level Scenario Sketch Planning Tool*, https://sls.geoplan.ufl.edu/ (last visited Jan. 29, 2022). The purpose of the Sea Level Scenario Sketch Planning Tool is to help identify transportation infrastructure exposed to current and future flood risks. It was created by the University of Florida GeoPlan Center with funding from the DOT. *Id.*

[27] *Id.*

Division of Emergency Management Programs

The Division of Emergency Management (DEM) in the Executive Office of the Governor maintains a statewide emergency management program, and its roles include administering federal mitigation grant programs and serving as Florida's state coordinating agency for the National Flood Insurance Program (NFIP).[28]

The NFIP was created by passage of the National Flood Insurance Act of 1968.[29] The NFIP is managed by the Federal Emergency Management Agency (FEMA) and enables homeowners, business owners, and renters in flood-prone areas to purchase flood insurance protection from the federal government.[30] Flood insurance through the NFIP is only available in communities that adopt and enforce federal floodplain management criteria.[31]

The NFIP elevation certificate is used to provide elevation information necessary to ensure compliance to community floodplain management ordinances, to determine the proper insurance premium rate, or to support a request for a Letter of Map Amendment.[32] As part of the agreement for making flood insurance available in a community, the NFIP requires each community to adopt floodplain management regulations that specify minimum requirements for reducing flood losses.[33] One such requirement is for the community to obtain the elevation of the lowest floor (including the basement) of all new and substantially improved buildings, and maintain a record of such information. The elevation certificate provides a way for a community to document compliance with the community's floodplain management ordinance.[34]

In Florida, elevation certificates must be completed by a surveyor and mapper.[35] Since January 1, 2017, surveyors and mappers are required to submit, within 30 days after completion, a copy of each elevation certificate that he or she completes to the DEM. The surveyor and mapper must retain a signed and sealed original in his or her records.[36] Elevation certificates may be submitted to the DEM using its online web application[37] developed for this purpose.[38]

Other State, Regional, and Local Programs

The following list includes examples of resilience efforts by other government entities in Florida:

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[28] Division of Emergency Management (DEM), *Mitigation*, https://www.floridadisaster.org/dem/mitigation/ (last visited Jan. 26, 2022); DEM, *State Floodplain Management Program*, https://www.floridadisaster.org/dem/mitigation/floodplain/ (last visited Jan. 26, 2022).
[29] FEMA, *50 Years of the NFIP, available at* https://www.fema.gov/sites/default/files/2020-05/NFIP_50th_Final_8.5x11_Regional_Printable.pdf (last visited Jan. 29, 2022).
[30] Benefits.gov, *National Flood Insurance Program (NFIP)*, https://www.benefits.gov/benefit/435 (last visited Jan. 29, 2022).
[31] *Id.*
[32] FEMA, *Elevation Certificate and Instructions (2019 Edition), available at* https://www.fema.gov/sites/default/files/2020-07/fema_nfip_elevation-certificate-form_feb-2020.pdf (last visited Jan. 29, 2022).
[33] *Id.*
[34] *Id.*
[35] Section 472.0366(1)(b), F.S.
[36] Section 472.0366(2), F.S.
[37] DEM, *Elevation Certificates Submittal Form*, https://maps.floridadisaster.org/portal/apps/GeoForm/index.html?appid=d5642b277af24b7191107524b390bada (last visited Jan. 31, 2022).
[38] DEM, *Elevation Certificates*, https://www.floridadisaster.org/elevation-certificates/ (last visited Jan. 31, 2022).

- Florida's coastal local governments must have a coastal management element in their comprehensive plans,[39] and this element may include an "adaptation action area" designation[40] and must contain a redevelopment component in compliance with the 2015 "Peril of Flood" law.[41]
- The Department of Economic Opportunity assists communities with adaptation planning, and its Office of Long-Term Resiliency supports communities following disasters, which includes administering federal funds that support resiliency efforts.[42]
- The Fish and Wildlife Conservation Commission (FWC) is Florida's lead agency on addressing the impacts of climate change on fish and wildlife.[43] In 2016, the FWC published a guide of adaptation strategies for the predicted impacts of climate changes.[44]
- The Department of Agriculture and Consumer Services' Office of Energy develops Florida's energy policy and works on climate change issues.[45]
- The Department of Business and Professional Regulation's Florida Building Commission adopts floodplain management and resilience standards into the Florida Building Code.[46]
- The water management districts implement a range of resilience and flood control programs.[47]
- Florida is divided into ten Regional Planning Councils, and some do resilience planning.[48]
    - The Northeast Florida Regional Council's efforts include grant funding, technical support, and resources including an online mapping tool for determining risk.[49]

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[39] Sections 380.24, 163.3177(6)(g), and 163.3178(2), F.S.
[40] Chapter 2011-139, Laws of Fla.; ss. 163.3164(1) and 163.3177(6)(g)10., F.S.
[41] Chapter 2015-69, Laws of Fla.; s. 163.3178(2)(f), F.S.
[42] Dep't of Economic Opportunity (DEO), *Adaptation Planning*, http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/adaptation-planning (last visited Jan. 26, 2022); DEO, *Office of Long-Term Resiliency*, http://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/disaster-recovery-initiative (last visited Jan. 26, 2022).
[43] Florida Fish and Wildlife Conservation Commission (FWC), *What FWC is Doing*, https://myfwc.com/conservation/special-initiatives/climate-change/fwc/ (last visited Jan. 26, 2022).
[44] FWC, *A Guide to Climate Change Adaptation for Conservation*, 1-1 (2016), *available at* https://myfwc.com/media/5864/adaptation-guide.pdf (last visited Feb. 3, 2021).
[45] Dep't of Agriculture and Consumer Services (DACS), *Office of Energy*, https://www.fdacs.gov/Divisions-Offices/Energy (last visited Jan. 26, 2022).
[46] Chapter 553, pt. IV, F.S.; Fla. Admin. Code R. 61g20-1.001; *see* Building a Safer Florida, Inc., *Flood Resistant Construction and the 6th Edition Florida Building Code*, 1 (2017), *available at* https://floridabuilding.org/fbc/thecode/2017-6edition/BASF_2017_flood_061217.pdf (last visited Jan. 26, 2022).
[47] St. John's River Water Management District, *Sea-Level Rise and Resiliency*, https://www.sjrwmd.com/localgovernments/sea-level-rise/ (last visited Jan. 26, 2022); Akintunde Owosina, Chief, Hydrology and Hydraulics Bureau, South Florida Water Management District (SFWMD), Governing Board Meeting, June 13, 2019, *Impact of Sea Level Rise on the SFWMD Mission, Focus on Flood Protection*, 2, 6-10 (June 13, 2019), *available at* https://apps.sfwmd.gov/webapps/publicMeetings/viewFile/21964 (last visited Jan. 26, 2022); Dr. Carolina Maran, District Resiliency Officer, SFWMD, Governing Board Meeting, March 12, 2020, *Central and Southern Florida Flood Resiliency Study*, 1 (Mar. 12, 2020), *available at* https://apps.sfwmd.gov/ci/publicmeetings/viewFile/25445 (last visited Jan. 26, 2022). In 2020, SFWMD appointed a District Resiliency Officer. It also implements a Flood Control Level of Service Program and, in collaboration with the U.S. Army Corps of Engineers, has initiated the Central and South Florida Flood Resiliency Study. *See id.; see also* SFWMD, *Resiliency and Flood Protection*, https://www.sfwmd.gov/our-work/resiliency-and-flood-protection (last visited Jan. 29, 2022).
[48] Sections 186.501-186.513, F.S.
[49] Northeast Florida Regional Council, *Resiliency Services*, https://www.nefrc.org/resiliency (last visited Jan. 26, 2022).

  - The East Central Florida Regional Planning Council has formed the East Central Florida Regional Resilience Collaborative, which includes 25 member counties and cities and six member organizations and agencies.[50]
  - The Tampa Bay Regional Planning Council is active on resiliency planning.[51]
- The United States Army Corps of Engineers (USACE) is planning and implementing many projects in Florida related to resilience.
  - The Miami-Dade Back Bay Coastal Storm Risk Management Feasibility Study is a three-year study, ending in September of 2021, that has tentatively recommended a plan that may include storm surge barriers, floodproofing of critical infrastructure countywide, and nonstructural measures (including home elevations or floodproofing) in seven refined focus areas determined to be the most socially vulnerable economic damage centers in Miami-Dade County.[52]
  - The Central and Southern Florida Flood Resiliency Study was proposed by the USACE, with the support of the South Florida Water Management District, to reevaluate the Central and Southern Florida Project to address climate change, sea level rise, and more.[53]
- The FEMA administers hazard mitigation programs that increase resilience and facilitate hazard mitigation planning and grant funding.[54] The FEMA also administers the NFIP, which includes insurance, floodplain mapping, and federal, state, and local regulations.[55]

The Office of Economic and Demographic Research

The Legislature's Office of Economic and Demographic Research (EDR) is a research arm principally concerned with forecasting economic and social trends that affect policy making, revenues, and appropriations.[56] The EDR conducts an annual assessment of Florida's water resources and conservation lands.[57] For water resources, the assessment must include historical, current, and estimated future expenditures associated with water supply and demand, water quality protection and restoration, and government revenues dedicated for such purposes.[58] Also,

[50] East Central Florida Regional Planning Council, *East Central Florida Regional Resilience Collaborative*, https://www.ecfrpc.org/resiliencecollaborative (last visited Jan. 26, 2022).
[51] Tampa Bay Regional Planning Council, *Resiliency Planning*, https://www.tbrpc.org/resiliency/ (last visited Jan. 26, 2022).
[52] USACE, *Miami-Dade Back Bay Coastal Storm Risk Management Feasibility Study*, https://www.saj.usace.army.mil/MiamiDadeBackBayCSRMFeasibilityStudy/ (last visited Jan. 26, 2022); U.S. Army Corps of Engineers, *Miami-Dade Back Bay Coastal Storm Risk management Draft Integrated Feasibility Report and Programmatic Environmental Impact Statement*, 177-178, 181, 222-238 (May 2020), *available at* https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll7/id/14453 (last visited Jan. 26, 2022).
[53] Dr. Carolina Maran, District Resiliency Officer, South Florida Water Management District, Governing Board Meeting March 12, 2020, *Central and Southern Florida Flood Resiliency Study*, video begins at 4:50:30 (Mar. 12, 2020), *available at* http://sfwmd.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=2008&Format=Agenda (last visited Jan. 26, 2022); *see also* SFWMD, *Central and Southern Florida Flood Resiliency Study*, https://www.sfwmd.gov/our-work/central-and-southern-florida-flood-resiliency-study (last visited Jan. 29, 2022).
[54] Federal Emergency Management Agency (FEMA), *Hazard Mitigation Assistance Guidance - Hazard Mitigation Grant Program, Pre-Disaster Mitigation Program, and Flood Mitigation Assistance Program*, 1–5 (2015), *available at* https://www.fema.gov/sites/default/files/2020-07/fy15_HMA_Guidance.pdf (last visited Jan. 26, 2022).
[55] FEMA, *National Flood Insurance Program (NFIP), Floodplain Management Requirements, FEMA 480*, 2-6–2-8 (2005), *available at* https://www.fema.gov/sites/default/files/documents/fema-480_floodplain-management-study-guide_local-officials.pdf (last visited Jan. 26, 2022); *see* 44 C.F.R. parts 59 and 60.
[56] EDR, *Welcome*, http://edr.state.fl.us/Content/ (last visited Mar. 3, 2021); *see* s. 1.01(19), F.S.
[57] Section 403.928, F.S.
[58] Section 403.928(1), F.S.

beginning with the assessment due January 1, 2022, the assessment must include an analysis of the expenditures necessary to repair, replace, and expand water-related infrastructure.[59] For conservation lands, the assessment must include expenditures, revenues, and tax implications related to government acquisition and maintenance of conservation lands in the state.[60]

The EDR must submit the assessment to the Legislature by January 1 of each year.[61] In 2021, the EDR published the most recent edition of the Annual Assessment of Florida's Water Resources and Conservation Lands.[62]

Florida Flood Hub for Applied Research and Innovation

The Florida Flood Hub for Applied Research and Innovation (Flood Hub) is established within the University of South Florida (USF) College of Marine Science.[63] Its purpose is to coordinate efforts between the academic and research institutions of the state. The USF's College of Marine Science serves as the lead institution and engages other academic and research institutions, private partners, and financial sponsors to coordinate efforts to support applied research and innovation to address the flooding and sea level rise challenges of the state.[64]

In 2021, the Legislature created the Flood Hub and tasked it with all of the following minimum duties:[65]

- Organize existing data needs for a comprehensive statewide flood vulnerability and sea level rise analysis and perform a gap analysis to determine data needs;
- Develop statewide open source hydrologic models for physically-based flood frequency estimation and real-time forecasting of floods, including hydraulic models of floodplain inundation mapping, real-time compound and tidal flooding forecasts, future groundwater elevation conditions, and economic damage and loss estimates;
- Coordinate research funds from the state, the federal government, or other funding sources for related Flood Hub activities across all participating entities;
- Establish community-based programs to improve flood monitoring and prediction along major waterways, including intracoastal waterways and coastlines, of the state and to support ongoing flood research;
- Coordinate with agencies, including, but not limited to, the DEP and the water management districts;
- Share its resources and expertise;
- Assist in the development of training and in the development of a workforce in the state that is knowledgeable about flood and sea level rise research, prediction, and adaptation and mitigation strategies;
- Develop opportunities to partner with other flood and sea level rise research and innovation leaders for sharing technology or research; and

[59] *Id.*
[60] Section 403.928(2), F.S.
[61] Section 403.928(7), F.S.
[62] EDR, *Annual Assessment of Florida's Water Resources and Conservation Lands* (2021), *available at* http://edr.state.fl.us/Content/natural-resources/LandandWaterAnnualAssessment_2021Edition.pdf (last visited Jan. 28, 2022).
[63] Section 380.0933(1), F.S.
[64] *Id.*
[65] Ch. 2021-28, s. 2, Laws of Fla., as codified in s. 380.0933(2), F.S.

- Conduct these activities in cooperation with various local, state, and federal government entities as well as other flood and sea level rise research centers.[66]

III. Effect of Proposed Changes:

Section 1 of the bill establishes a Statewide Office of Resilience within the Executive Office of the Governor. The bill provides that the office must be headed by a Chief Resilience Officer, who is appointed by and serves at the pleasure of the Governor.

Section 2 of the bill requires the Department of Transportation (DOT) to develop a resilience action plan for the State Highway System based on current conditions and forecasted future events. The goals of the resilience action plan are to do all of the following:

- Recommend strategies to enhance infrastructure and the operational resilience of the State Highway System, which may be incorporated into the transportation asset management plan;
- Recommend design changes for retrofitting existing and constructing new state highway facilities; and
- Enhance partnerships for collaboration to address multijurisdictional resilience needs.

The bill requires the resilience action plan to include an assessment of the State Highway System to identify roadway facilities and drainage outfalls that may be subject to vulnerabilities associated with tidal, rainfall, the combination of tidal and rainfall, and storm surge flooding, including future projections of sea-level rise, using existing data for current and forecasted future events. As part of the assessment, the DOT must do all of the following using the most up-to-date National Oceanic and Atmospheric Administration precipitation frequency and sea-level rise data:

- Synthesize historical and current infrastructure resilience issues statewide;
- Evaluate alternatives for retrofitting existing systems and infrastructure;
- Develop prioritization criteria for resilience project identification;
- Develop a prioritized resilience needs project list, in addition to existing projects within the work program, with the associated costs and timeline; and
- Develop a statewide database identifying and documenting those assets vulnerable to current and future flooding. The department shall develop a cost estimate and schedule to enhance existing data to include site-specific details and existing criteria to improve the needs prioritization.

The bill requires the DOT to perform a systemic review of its policies, procedures, manuals, tools, and guidance documents to identify revisions that will facilitate cost-effective improvements to address existing and future State Highway System infrastructure vulnerabilities associated with flooding and sea-level rise.

The DOT must also provide technical assistance to local agencies and modal partners on resilience issues related to the State Highway System and the deployment of local and regional solutions.

[66] *Id.*

The bill requires the DOT to submit the resilience action plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by June 20, 2023. Every third year on June 30 thereafter, the DOT must submit a status report reviewing updates to the action plan and the associated implementation activities.

Section 3 of the bill amends s. 380.093, F.S., relating to the Resilient Florida Grant Program; the Comprehensive Statewide Flood Vulnerability and Sea Level Rise Data Set and Assessment; the Statewide Flooding and Sea Level Rise Resilience Plan; and regional resilience entities.

The bill creates two new definitions:

- "Preconstruction activities" means activities associated with a project which occur before construction begins, including, but not limited to, design of the project, permitting for the project, surveys, site development, solicitation, public hearings, local code amendments, establishing local funding sources, and easement acquisition; and
- "Regionally significant assets" means critical assets that support the needs of communities spanning multiple geopolitical jurisdictions, including, but not limited to, regional medical centers, emergency operations centers, regional utilities, major transportation hubs and corridors, airports, and seaports.

The bill clarifies that, subject to appropriation, the Department of Environmental Protection (DEP) may provide grants to a county or municipality to fund vulnerability assessments that identify or address risks of "inland or coastal" flooding and sea-level rise.

The bill provides that subject to appropriation, the DEP may also provide grants to a county or municipality to fund preconstruction activities for projects to be submitted for inclusion in the Statewide Flooding and Sea-Level Rise Resilience Plan, which are located in a municipality that has a population of 10,000 or fewer, or a county that has a population of 50,000 or fewer, according to the most recent April 1 population estimates posted on the Office of Economic and Demographic Research's website.

The bill eliminates the authorization for the DEP to provide grants to a county or municipality to fund projects to adapt critical assets to the effects of flooding and sea-level rise.

With respect to vulnerability assessments funded by the Resilient Florida Grant Program, the bill requires noncoastal communities to include the depth of rainfall-induced flooding for a 100-year storm and a 500-year storm, as defined by the applicable water management district or, if necessary, the appropriate federal agency. Projections of future rainfall conditions should be utilized, if available.

The bill provides that the DEP must complete the required comprehensive statewide flood vulnerability and sea-level rise data set by July 1, 2023, instead of July 1, 2022, and that in developing the data set, the DEP must work in coordination with the Florida Flood Hub for Applied Research and Innovation. It also requires the DEP to complete the required comprehensive statewide flood vulnerability and sea-level rise assessment by July 1, 2024, instead of July 1, 2023.

The bill provides that all eligible projects submitted to the DEP for inclusion in the statewide flooding and sea-level rise resilience plan must be ranked and included in the plan. Each plan must include:

- A detailed narrative overview describing how the plan was developed, including a description of the methodology used by the DEP to determine project eligibility;
- A description of the methodology used to rank projects;
- The specific scoring system used;
- The project proposal application form;
- A copy of each submitted project proposal application form with projects separated by "eligible" and "not eligible";
- The total number of project proposals received and deemed eligible;
- The total funding requested; and
- The total funding requested for eligible projects.

The bill provides that the preliminary plan that must be submitted by December 1, 2021, must include projects submitted by the water management districts which mitigate the risks of flooding or sea-level rise on water supplies or water resources of the state. It also provides that the plan submitted by December 1, 2023, will be an update to the preliminary plan, and pushes back by one year (to December 1, 2024) the date by which the plan must address risks of flooding and sea-level rise identified in the comprehensive flood vulnerability and sea-level rise assessment.

The bill expands the list of entities that may submit a list of proposed projects to the DEP that address risks of flooding or sea-level rise identified in the vulnerability assessments funded by the Resilient Florida Grant Program, to include special districts as defined in state law, if they are responsible for the operation and maintenance of an airport or a seaport facility. The bill also provides that for the plans submitted by December 1, 2021; December 1, 2022; and December 1, 2023, counties, municipalities, and special districts may submit projects identified in existing vulnerability assessments which do not comply with Resilient Florida Grant Program requirements.

The bill expands the list of entities that may submit a list of proposed projects to the DEP that mitigate the risks of flooding or sea-level rise on water supplies or water resources to include drainage districts, erosion control districts, and regional water supply authorities.

The bill revises the $100 million cap on funding proposed for each year of the statewide flooding and sea-level rise resilience plan to a minimum threshold of $100 million.

Section 4 of the bill requires the Florida Flood Hub for Applied Research and Innovation (Flood Hub) to provide tidal and storm surge flooding data to counties and municipalities for vulnerability assessments that are conducted pursuant to the Resilient Florida Grant Program. The Flood Hub must provide rainfall-induced and compound flooding data sets; however, more localized data or modeling may be used.

Section 5 of the bill amends existing law to direct surveyors and mappers, beginning January 1, 2023, to submit digital copies of the elevation certificates they complete to the Division of Emergency Management (DEM) as outlined on the DEM's website.

Section 6 of the bill provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The bill will likely cause the DOT to incur costs associated with developing the required resilience action plan for the State Highway System.

VI. Technical Deficiencies:

The bill amends s. 472.0366(2), F.S., to direct surveyors and mappers to submit digital copies of the elevation certificates they complete "beginning January 1, 2023." However, this amendment could be interpreted as eliminating the existing requirement to submit copies of elevation

certificates before and through January 1, 2023. Amending the subsection to read as follows would address the issue.

Delete lines 593 – 596 and insert:

> (2) ~~Beginning January 1, 2017,~~ A surveyor and mapper shall, within 30 days after completion, submit to the division a copy of each elevation certificate that he or she completes as outlined on the division's website. Beginning January 1, 2023, such copies shall be submitted digitally. The copy must

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 14.2031 and 339.157.

This bill substantially amends the following sections of the Florida Statutes: 380.093, 380.0933, and 472.0366.

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 Environment and Natural Resources on January 31, 2022:

- Retains the creation of the Statewide Office of Resilience headed by a Chief Resilience Officer.
- Requires the Department of Transportation (DOT) to develop a resilience action plan for the State Highway System. The bill identifies goals of the action plan and requires it to include certain components. It also requires the DOT to submit the action plan to the Governor and the Legislature by June 20, 2023, and a status report reviewing updates to the action plan and associated implementation activities every third year on June 30 thereafter.
- Makes various revisions to s. 380.093, F.S., relating to statewide resiliency funding and planning. It:
  - Defines "Preconstruction activities" and "Regionally significant assets."
  - Clarifies that the Department of Environmental Protection (DEP) may use the Resilient Florida Grant Program (Grant Program) to fund "inland or coastal" flooding and sea-level rise vulnerability assessments.
  - Provides that the DEP may use the Grant Program to fund preconstruction activities for Statewide Flooding and Sea-Level Rise Resilience Plan (Plan) projects in municipalities and counties meeting certain population thresholds, but may not use such funds for projects to adapt critical assets to flooding and sea-level rise.

- Specifies when noncoastal communities must and should use certain rainfall data for vulnerability assessments funded by the Grant Program.
- Pushes back by one year (to 2023 and 2024, respectively) the dates by which the Comprehensive Statewide Flood Vulnerability and Sea-Level Rise Data Set and the Assessment must be completed.
- Provides that all eligible projects submitted to the DEP for inclusion in the Plan must be included in the Plan and identifies what each Plan must include.
- Provides that the preliminary Plan must include projects submitted by the water management districts that mitigate the risks of flooding or sea-level rise on water supplies or resources.
- Provides that the Plans submitted in 2022 and 2023 will be updates to the preliminary plan, and that the Plan submitted in 2024 and thereafter must address risks of flooding and sea-level rise identified in the assessment.
- Provides that, in addition to counties and municipalities, certain special districts may also submit a list of proposed projects to the DEP that address risks of flooding or sea-level rise identified in the vulnerability assessments funded by the Grant Program. Also provides that for certain Plans, such entities may submit projects that do not comply with Grant Program requirements.
- Adds drainage districts, erosion control districts, and regional water supply authorities to the entities that may submit a list of proposed projects to the DEP that mitigate the risks of flooding or sea-level rise on water supplies or water resources.
- Revises the $100 million cap on funding proposed for each year of the Plan to a minimum threshold of $100 million.

- Requires the Florida Flood Hub for Applied Research and Innovation to provide certain data to counties and municipalities for vulnerability assessments.
- Directs surveyors and mappers, beginning January 1, 2023, to submit digital copies of the elevation certificates they complete to the Division of Emergency Management (DEM) as outlined on DEM's website.

B. Amendments:

None.

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

By the Committee on Environment and Natural Resources; and
Senator Brodeur

592-02540-22 20221940c1

A bill to be entitled

An act relating to statewide flooding and sea-level rise resilience; creating s. 14.2031, F.S.; establishing the Statewide Office of Resilience within the Executive Office of the Governor; providing for the appointment of a Chief Resilience Officer; creating s. 339.157, F.S.; requiring the Department of Transportation to develop a resilience action plan for the State Highway System; providing the goals and required components of the plan; requiring the department to submit the plan to the Governor and the Legislature by a specified date; requiring the plan to be updated every 3 years; providing requirements for the updated plan; amending s. 380.093, F.S.; defining terms; revising the projects the Department of Environmental Protection may fund within the Resilient Florida Grant Program; revising vulnerability assessment requirements for noncoastal communities; extending the dates by which the department must complete a comprehensive statewide flood vulnerability and sea-level rise data set and assessment; requiring the data set to be developed in coordination with the Florida Flood Hub for Applied Research and Innovation; requiring eligible projects submitted to the department to be ranked and included in the Statewide Flood and Sea-Level Rise Resilience Plan; revising the entities authorized to submit proposed projects by specified dates for the plan; amending s. 380.0933, F.S.; requiring the Florida Flood Hub for Applied

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Research and Innovation to provide tidal and storm surge flooding data to counties and municipalities for vulnerability assessments; amending s. 472.0366, F.S.; revising the effective date of a requirement that a surveyor and mapper submit a copy of completed elevation certificates to the Division of Emergency Management; requiring the surveyor and mapper to submit a digital copy of a completed elevation certificate to the division; providing an effective date.

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

Section 1. Section 14.2031, Florida Statutes, is created to read:

14.2031 Statewide Office of Resilience.—The Statewide Office of Resilience is established within the Executive Office of the Governor. The office shall be headed by a Chief Resilience Officer, who is appointed by and serves at the pleasure of the Governor.

Section 2. Section 339.157, Florida Statutes, is created to read:

339.157 Resilience action plan.—

(1) The department shall develop a resilience action plan for the State Highway System based on current conditions and forecasted future events. The goals of the action plan are to do all of the following:

(a) Recommend strategies to enhance infrastructure and the operational resilience of the State Highway System which may be

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

incorporated into the transportation asset management plan.

(b) Recommend design changes for retrofitting existing and constructing new state highway facilities.

(c) Enhance partnerships for collaboration to address multijurisdictional resilience needs.

(2) The resilience action plan must include all of the following components:

(a) An assessment of the State Highway System to identify roadway facilities and drainage outfalls that may be subject to vulnerabilities associated with tidal, rainfall, the combination of tidal and rainfall, and storm surge flooding, including future projections of sea-level rise, using existing data for current and forecasted future events. As part of the assessment, the department shall do all of the following using the most up-to-date National Oceanic and Atmospheric Administration precipitation frequency and sea-level rise data:

1. Synthesize historical and current infrastructure resilience issues statewide.

2. Evaluate alternatives for retrofitting existing systems and infrastructure.

3. Develop prioritization criteria for resilience project identification.

4. Develop a prioritized resilience needs project list, in addition to existing projects within the work program, with the associated costs and timeline.

5. Develop a statewide database identifying and documenting those assets vulnerable to current and future flooding. The department shall develop a cost estimate and schedule to enhance existing data to include site-specific details and existing

criteria to improve the needs prioritization.

(b) A systemic review of the department's policies, procedures, manuals, tools, and guidance documents to identify revisions that will facilitate cost-effective improvements to address existing and future State Highway System infrastructure vulnerabilities associated with flooding and sea-level rise.

(c) Provision of technical assistance to local agencies and modal partners on resilience issues related to the State Highway System and the deployment of local and regional solutions.

(3) By June 20, 2023, the department shall submit the resilience action plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Every third year on June 30 thereafter, the department shall submit a status report reviewing updates to the action plan and the associated implementation activities.

Section 3. Section 380.093, Florida Statutes, is amended to read:

380.093 Resilient Florida Grant Program; comprehensive statewide flood vulnerability and sea-level ~~sea level~~ rise data set and assessment; Statewide Flooding and Sea-Level ~~Sea Level~~ Rise Resilience Plan; regional resilience entities.—

(1) LEGISLATIVE INTENT.—

(a) The Legislature recognizes that this ~~the~~ state is particularly vulnerable to adverse impacts from flooding resulting from increases in frequency and duration of rainfall events, storm surge from more frequent and severe weather systems, and sea-level ~~sea level~~ rise. Such adverse impacts pose economic, social, environmental, and public health and safety challenges to this ~~the~~ state. To most effectively address these

challenges, funding should be allocated in a manner that prioritizes addressing the most significant risks.

(b) The Legislature further recognizes that the adverse impacts of flooding and sea-level ~~sea level~~ rise affect coastal and inland communities all across the state. Consequently, a coordinated approach is necessary to maximize the benefit of efforts to address such impacts and to improve the state's resilience to flooding and sea-level ~~sea level~~ rise.

(c) The Legislature further recognizes that to effectively and efficiently address and prepare for the adverse impacts of flooding and sea-level ~~sea level~~ rise in this ~~the~~ state, it is necessary to conduct a comprehensive statewide assessment of the specific risks posed to this ~~the~~ state by flooding and sea-level ~~sea level~~ rise and develop a statewide coordinated approach to addressing such risks.

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

(a) "Critical asset" includes:

1. Transportation assets and evacuation routes, including airports, bridges, bus terminals, ports, major roadways, marinas, rail facilities, and railroad bridges.

2. Critical infrastructure, including wastewater treatment facilities and lift stations, stormwater treatment facilities and pump stations, drinking water facilities, water utility conveyance systems, electric production and supply facilities, solid and hazardous waste facilities, military installations, communications facilities, and disaster debris management sites.

3. Critical community and emergency facilities, including schools, colleges, universities, community centers, correctional facilities, disaster recovery centers, emergency medical service

facilities, emergency operation centers, fire stations, health care facilities, hospitals, law enforcement facilities, local government facilities, logistical staging areas, affordable public housing, risk shelter inventory, and state government facilities.

4. Natural, cultural, and historical resources, including conservation lands, parks, shorelines, surface waters, wetlands, and historical and cultural assets.

(b) "Department" means the Department of Environmental Protection.

(c) "Preconstruction activities" means activities associated with a project which occur before construction begins, including, but not limited to, design of the project, permitting for the project, surveys, site development, solicitation, public hearings, local code amendments, establishing local funding sources, and easement acquisition.

(d) "Regionally significant assets" means critical assets that support the needs of communities spanning multiple geopolitical jurisdictions, including, but not limited to, regional medical centers, emergency operations centers, regional utilities, major transportation hubs and corridors, airports, and seaports.

(3) RESILIENT FLORIDA GRANT PROGRAM.—

(a) The Resilient Florida Grant Program is established within the department.

(b) Subject to appropriation, the department may provide grants to a county or municipality to fund:

1. The costs of community resilience planning and necessary data collection for such planning, including comprehensive plan

amendments and necessary corresponding analyses that address the requirements of s. 163.3178(2)(f).~~,~~

2. Vulnerability assessments that identify or address risks of inland or coastal flooding and sea-level ~~sea level~~ rise.~~,~~

3. The development of projects, plans, and policies that allow communities to prepare for threats from flooding and sea-level ~~sea level~~ rise.~~, and~~

4. Preconstruction activities for projects to be submitted for inclusion in the Statewide Flooding and Sea-Level Rise Resilience Plan which are located in a municipality that has a population of 10,000 or fewer or a county that has a population of 50,000 or fewer, according to the most recent April 1 population estimates posted on the Office of Economic and Demographic Research's website ~~projects to adapt critical assets to the effects of flooding and sea level rise~~.

(c) A vulnerability assessment conducted pursuant to paragraph (b) must encompass the entire county or municipality; include all critical assets owned or maintained by the grant applicant; and use the most recent publicly available Digital Elevation Model and generally accepted analysis and modeling techniques. An assessment may encompass a smaller geographic area or include only a portion of the critical assets owned or maintained by the grant applicant with appropriate rationale and upon approval by the department. Locally collected elevation data may also be included as part of the assessment as long as it is submitted to the department pursuant to this paragraph.

1. The assessment must include an analysis of the vulnerability of and risks to critical assets, including regionally significant assets, owned or managed by the county or

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municipality.

2. Upon completion of a vulnerability assessment, the county or municipality shall submit to the department the following:

a. A report detailing the findings of the assessment.

b. All electronic mapping data used to illustrate flooding and sea-level ~~sea level~~ rise impacts identified in the assessment. When submitting such data, the county or municipality shall include:

(I) Geospatial data in an electronic file format suitable for input to the department's mapping tool.

(II) Geographic information system data that has been projected into the appropriate Florida State Plane Coordinate System and that is suitable for the department's mapping tool. The county or municipality must also submit metadata using standards prescribed by the department.

c. A list of critical assets, including regionally significant assets, that are impacted by flooding and sea-level ~~sea level~~ rise.

(d) A vulnerability assessment conducted pursuant to paragraph (b) must include all of the following, if applicable:

1. Peril of flood comprehensive plan amendments that address the requirements of s. 163.3178(2)(f), if the county or municipality is subject to such requirements and has not complied with such requirements as determined by the Department of Economic Opportunity.

2. The depth of:

a. Tidal flooding, including future high tide flooding, which must use thresholds published and provided by the

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department. To the extent practicable, the analysis should also geographically display the number of tidal flood days expected for each scenario and planning horizon.

b. Current and future storm surge flooding using publicly available National Oceanic and Atmospheric Administration or Federal Emergency Management Agency storm surge data. The initial storm surge event used must equal or exceed the current 100-year flood event. Higher frequency storm events may be analyzed to understand the exposure of a critical asset.

c. To the extent practicable, rainfall-induced flooding using spatiotemporal analysis or existing hydrologic and hydraulic modeling results. Future boundary conditions should be modified to consider sea-level ~~sea level~~ rise and high tide conditions. Vulnerability assessments for noncoastal communities must include the depth of rainfall-induced flooding for a 100-year storm and a 500-year storm, as defined by the applicable water management district or, if necessary, the appropriate federal agency. Projections of future rainfall conditions should be utilized, if available.

d. To the extent practicable, compound flooding or the combination of tidal, storm surge, and rainfall-induced flooding.

3. The following scenarios and standards:

a. All analyses in the North American Vertical Datum of 1988.

b. At least two local sea-level ~~sea level~~ rise scenarios, which must include the 2017 National Oceanic and Atmospheric Administration intermediate-low and intermediate-high sea-level ~~sea level~~ rise projections.

c. At least two planning horizons that include planning horizons for the years 2040 and 2070.

d. Local sea-level ~~sea level~~ data that has been interpolated between the two closest National Oceanic and Atmospheric Administration tide gauges. Local sea-level ~~sea level~~ data may be taken from one such gauge if the gauge has a higher mean sea level. Data taken from an alternate tide gauge may be used with appropriate rationale and department approval, as long as it is publicly available or submitted to the department pursuant to paragraph (b).

(4) COMPREHENSIVE STATEWIDE FLOOD VULNERABILITY AND SEA-LEVEL ~~SEA LEVEL~~ RISE DATA SET AND ASSESSMENT.—

(a) By July 1, 2023 ~~2022~~, the department shall complete the development of a comprehensive statewide flood vulnerability and sea-level ~~sea level~~ rise data set sufficient to conduct a comprehensive statewide flood vulnerability and sea-level ~~sea level~~ rise assessment. In developing the data set, the department, in coordination with the Florida Flood Hub for Applied Research and Innovation, shall compile, analyze, and incorporate, as appropriate, information related to vulnerability assessments submitted to the department pursuant to subsection (3) or any previously completed assessments that meet the requirements of subsection (3).

1. The Chief Science Officer shall, in coordination with necessary experts and resources, develop statewide sea-level ~~sea level~~ rise projections that incorporate temporal and spatial variability, to the extent practicable, for inclusion in the data set. This subparagraph does not supersede regionally adopted projections.

2. The data set must include information necessary to determine the risks to inland and coastal communities, including, but not limited to, elevation, tidal levels, and precipitation.

(b) By July 1, 2024 ~~2023~~, the department shall complete a comprehensive statewide flood vulnerability and sea-level ~~sea level~~ rise assessment that identifies inland and coastal infrastructure, geographic areas, and communities in this ~~the~~ state that are vulnerable to flooding and sea-level ~~sea level~~ rise and the associated risks.

1. The department shall use the comprehensive statewide flood vulnerability and sea-level ~~sea level~~ rise data set to conduct the assessment.

2. The assessment must incorporate local and regional analyses of vulnerabilities and risks, including, as appropriate, local mitigation strategies and postdisaster redevelopment plans.

3. The assessment must include an inventory of critical assets, including regionally significant assets, that are essential for critical government and business functions, national security, public health and safety, the economy, flood and storm protection, water quality management, and wildlife habitat management, and must identify and analyze the vulnerability of and risks to such critical assets. When identifying critical assets for inclusion in the assessment, the department shall also take into consideration the critical assets identified by local governments and submitted to the department pursuant to subsection (3).

(c) The department shall update the comprehensive statewide

flood vulnerability and sea-level ~~sea level~~ rise data set and assessment every 5 years. The department may update the data set and assessment more frequently if it determines that updates are necessary to maintain the validity of the data set and assessment.

(5) STATEWIDE FLOODING AND SEA-LEVEL ~~SEA LEVEL~~ RISE RESILIENCE PLAN.—

(a) By December 1, 2021, and each December 1 thereafter, the department shall develop a Statewide Flooding and Sea-Level ~~Sea Level~~ Rise Resilience Plan on a 3-year planning horizon and submit it to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The plan must consist of ranked projects that address risks of flooding and sea-level ~~sea level~~ rise to coastal and inland communities in the state. All eligible projects submitted to the department under this section must be ranked and included in the plan. Each plan must include a detailed narrative overview describing how the plan was developed, including a description of the methodology used by the department to determine project eligibility, a description of the methodology used to rank projects, the specific scoring system used, the project proposal application form, a copy of each submitted project proposal application form with projects separated by "eligible" and "not eligible," the total number of project proposals received and deemed eligible, the total funding requested, and the total funding requested for eligible projects.

(b) The plan submitted by December 1, 2021, before the comprehensive statewide flood vulnerability and sea-level ~~sea level~~ rise assessment is completed, will be a preliminary plan

that includes projects that address ~~addresses~~ risks of flooding and sea-level ~~sea level~~ rise identified in available local government vulnerability assessments and projects submitted by water management districts which mitigate the risks of flooding or sea-level rise on water supplies or water resources of the state. The plan submitted by December 1, 2022, and the plan submitted by December 1, 2023, will be updates ~~an update~~ to the preliminary plan. The plan submitted by December 1, 2024 ~~2023~~, and each plan submitted by December 1 thereafter, must ~~shall~~ address risks of flooding and sea-level ~~sea level~~ rise identified in the comprehensive statewide flood vulnerability and sea-level ~~sea level~~ rise assessment.

(c) Each plan submitted by the department pursuant to this subsection must include the following information for each recommended project:

1. A description of the project.

2. The location of the project.

3. An estimate of how long the project will take to complete.

4. An estimate of the cost of the project.

5. The cost-share percentage available for the project.

6. A summary of the priority score assigned to the project.

7. The project sponsor.

(d)1. By September 1, 2021, and each September 1 thereafter, the following entities ~~counties and municipalities~~ may submit to the department a list of proposed projects that address risks of flooding or sea-level ~~sea level~~ rise identified in vulnerability assessments that meet the requirements of subsection (3):~~.~~

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a. Counties.

b. Municipalities.

c. Special districts, as defined in s. 189.012, which are responsible for the operation and maintenance of an airport or a seaport facility.

For the plans submitted by December 1, 2021; December 1, 2022; and December 1, 2023, such entities may submit projects identified in existing vulnerability assessments which do not comply with subsection (3). A regional resilience entity may also submit ~~such~~ proposed projects to the department pursuant to this subparagraph on behalf of one or more member counties or municipalities.

2. By September 1, 2021, and each September 1 thereafter, the following entities ~~each water management district and flood control district~~ may submit to the department a list of any proposed projects that mitigate the risks of flooding or sea-level ~~sea level~~ rise on water supplies or water resources of this ~~the~~ state and a corresponding evaluation of each project:~~.~~

a. Water management districts.

b. Drainage districts.

c. Erosion control districts.

d. Flood control districts.

e. Regional water supply authorities.

3. Each project submitted to the department pursuant to this paragraph ~~by a county, municipality, regional resilience entity, water management district, or flood control district~~ for consideration by the department for inclusion in the plan must include:

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a. A description of the project.

b. The location of the project.

c. An estimate of how long the project will take to complete.

d. An estimate of the cost of the project.

e. The cost-share percentage available for the project.

f. The project sponsor.

(e) Each project included in the plan must have a minimum 50 percent cost share unless the project assists or is within a financially disadvantaged small community. For purposes of this section, the term "financially disadvantaged small community" means:

1. A municipality that has a population of 10,000 or fewer, according to the most recent April 1 population estimates posted on the Office of Economic and Demographic Research's website, and a per capita annual income that is less than the state's per capita annual income as shown in the most recent release from the Bureau of the Census of the United States Department of Commerce that includes both measurements; or

2. A county that has a population of 50,000 or fewer, according to the most recent April 1 population estimates posted on the Office of Economic and Demographic Research's website, and a per capita annual income that is less than the state's per capita annual income as shown in the most recent release from the Bureau of the Census of the United States Department of Commerce that includes both measurements.

(f) To be eligible for inclusion in the plan, a project must have been submitted ~~by a county, municipality, regional resilience entity, water management district, or flood control~~

~~district~~ pursuant to paragraph (d) or must have been identified in the comprehensive statewide flood vulnerability and sea-level ~~sea level~~ rise assessment, as applicable.

(g) Expenses ineligible for inclusion in the plan include, but are not limited to, expenses associated with:

1. Aesthetic vegetation.

2. Recreational structures such as piers, docks, and boardwalks.

3. Water quality components of stormwater and wastewater management systems, except for expenses to mitigate water quality impacts caused by the project or expenses related to water quality which are necessary to obtain a permit for the project.

4. Maintenance and repair of over-walks.

5. Park activities and facilities, except expenses to control flooding or erosion.

6. Navigation construction, operation, and maintenance activities.

7. Projects that provide only recreational benefits.

(h) The department shall implement a scoring system for assessing each project eligible for inclusion in the plan pursuant to this subsection. The scoring system must include the following tiers and associated criteria:

1. Tier 1 must account for 40 percent of the total score and consist of all of the following criteria:

a. The degree to which the project addresses the risks posed by flooding and sea-level ~~sea level~~ rise identified in the local government vulnerability assessments or the comprehensive statewide flood vulnerability and sea-level ~~sea level~~ rise

assessment, as applicable.

b. The degree to which the project addresses risks to regionally significant assets.

c. The degree to which the project reduces risks to areas with an overall higher percentage of vulnerable critical assets.

d. The degree to which the project contributes to existing flooding mitigation projects that reduce upland damage costs by incorporating new or enhanced structures or restoration and revegetation projects.

2. Tier 2 must account for 30 percent of the total score and consist of all of the following criteria:

a. The degree to which flooding and erosion currently affect the condition of the project area.

b. The overall readiness of the project to proceed in a timely manner, considering the project's readiness for the construction phase of development, the status of required permits, the status of any needed easement acquisition, and the availability of local funding sources.

c. The environmental habitat enhancement or inclusion of nature-based options for resilience, with priority given to state or federal critical habitat areas for threatened or endangered species.

d. The cost-effectiveness of the project.

3. Tier 3 must account for 20 percent of the total score and consist of all of the following criteria:

a. The availability of local, state, and federal matching funds, considering the status of the funding award, and federal authorization, if applicable.

b. Previous state commitment and involvement in the

project, considering previously funded phases, the total amount of previous state funding, and previous partial appropriations for the proposed project.

c. The exceedance of the flood-resistant construction requirements of the Florida Building Code and applicable flood plain management regulations.

4. Tier 4 must account for 10 percent of the total score and consist of all of the following criteria:

a. The proposed innovative technologies designed to reduce project costs and provide regional collaboration.

b. The extent to which the project assists financially disadvantaged communities.

(i) The total amount of funding proposed for each year of the plan may not be less than ~~exceed~~ $100 million. Upon review and subject to appropriation, the Legislature shall approve funding for the projects as specified in the plan. Multiyear projects that receive funding for the first year of the project must be included in subsequent plans and funded until the project is complete, provided that the project sponsor has complied with all contractual obligations and funds are available.

(j) The department shall initiate rulemaking by August 1, 2021, to implement this section.

(6) REGIONAL RESILIENCE ENTITIES.—Subject to specific legislative appropriation, the department may provide funding for the following purposes to regional entities that are established by general purpose local governments and whose responsibilities include planning for the resilience needs of communities and coordinating intergovernmental solutions to

mitigate adverse impacts of flooding and sea-level ~~sea level~~ rise:

(a) Providing technical assistance to counties and municipalities.

(b) Coordinating multijurisdictional vulnerability assessments.

(c) Developing project proposals to be submitted for inclusion in the Statewide Flooding and Sea-Level ~~Sea Level~~ Rise Resilience Plan.

Section 4. Section 380.0933, Florida Statutes, is amended to read:

380.0933 Florida Flood Hub for Applied Research and Innovation.—

(1) The Florida Flood Hub for Applied Research and Innovation is established within the University of South Florida College of Marine Science to coordinate efforts between the academic and research institutions of the state. The University of South Florida College of Marine Science or its successor entity will serve as the lead institution and engage other academic and research institutions, private partners, and financial sponsors to coordinate efforts to support applied research and innovation to address the flooding and sea-level ~~sea level~~ rise challenges of this ~~the~~ state.

(2) The hub shall, at a minimum:

(a) Organize existing data needs for a comprehensive statewide flood vulnerability and sea-level ~~sea level~~ rise analysis and perform a gap analysis to determine data needs.

(b) Develop statewide open source hydrologic models for physically based flood frequency estimation and real-time

forecasting of floods, including hydraulic models of floodplain inundation mapping, real-time compound and tidal flooding forecasts, future groundwater elevation conditions, and economic damage and loss estimates.

(c) Coordinate research funds from the state, the federal government, or other funding sources for related hub activities across all participating entities.

(d) Establish community-based programs to improve flood monitoring and prediction along major waterways, including intracoastal waterways and coastlines, of this ~~the~~ state and to support ongoing flood research.

(e) Coordinate with agencies, including, but not limited to, the Department of Environmental Protection and water management districts.

(f) Share its resources and expertise.

(g) Assist in the development of training and in the development of a workforce in this ~~the~~ state that is knowledgeable about flood and sea-level ~~sea level~~ rise research, prediction, and adaptation and mitigation strategies.

(h) Develop opportunities to partner with other flood and sea-level ~~sea level~~ rise research and innovation leaders for sharing technology or research.

(i) Conduct the activities under this subsection in cooperation with various local, state, and federal government entities as well as other flood and sea-level ~~sea level~~ rise research centers.

(3) The hub must provide tidal and storm surge flooding data to counties and municipalities for vulnerability assessments that are conducted pursuant to s. 380.093(3). The

hub must provide rainfall-induced and compound flooding data sets; however, more localized data or modeling may be used.

(4) The hub shall employ an executive director.

(5)~~(4)~~ By July 1, 2022, and each July 1 thereafter, the hub shall provide an annual comprehensive report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that outlines its clearly defined goals and its efforts and progress on reaching such goals.

Section 5. Subsection (2) of section 472.0366, Florida Statutes, is amended to read:

472.0366 Elevation certificates; requirements for surveyors and mappers.—

(2) Beginning January 1, 2023 ~~2017~~, a surveyor and mapper shall, within 30 days after completion, submit to the division a digital copy of each elevation certificate that he or she completes as outlined on the division's website. The copy must be unaltered, except that the surveyor and mapper may redact the name of the property owner. The copy need not be signed and sealed when submitted to the division; however, an original signed and sealed copy must be retained in the surveyor and mapper's records as prescribed by rule of the board.

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

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The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 22, 2022

I respectfully request that **Senate Bill 1940**, relating to **Statewide Flooding and Sea Level Rise Resilience** 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

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/28/22
Meeting Date

S. Approps
Committee

HB 1940
Bill Number or Topic

Amendment Barcode (if applicable)

Name [redacted] Ellyn Bogdanoff Phone 954-232-5675

Address 1 E. Broward Blvd # 1800 Email ebogdanoff@beckerlawyers.com
Street

FTL FL 33334
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 Flood Coalition Action

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

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

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S-001 (08/10/2021)

2/28/22
Meeting Date

Senate Approps.
Committee

The Florida Senate
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SB 1940
Bill Number or Topic

Amendment Barcode (if applicable)

Name Paul Owens

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Address 308 N. Monroe St.
Street

Email powens@1000fof.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:
1000 Friends of Florida

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/28/22
Meeting Date

Appropriations
Committee

SB 1940
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jeff Scala

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Email jscala@fl-counties.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 Association of Counties

☐ 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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2/28/22
Meeting Date

Appropriations
Committee

SB 1940
Bill Number or Topic

Amendment Barcode (if applicable)

Name Rebecca O'Hara Phone

Address PO Box 1757 Email
Street

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:

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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2/28/2022
Meeting Date

Appropriations
Committee

1940
Bill Number or Topic

Amendment Barcode (if applicable)

Name David Ratlike

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Tallahassee FL 32311
City State Zip

Email ~~david@~~ Execdir@Resiliency Florida.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: Resiliency Florida

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

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

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

S-001 (08/10/2021)

The Florida Senate

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 Appropriations

BILL:	PCS/CS/SB 1950 (625186)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Brodeur
SUBJECT:	Statewide Medicaid Managed Care Program
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Brown	HP	**Fav/CS**
2.	McKnight	Money	AHS	**Recommend: Fav/CS**
3.	McKnight	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1950 makes changes to the Statewide Medicaid Managed Care (SMMC) program in anticipation of the next competitive procurement for the 2025 plan year. The bill:

- Requires provider service networks (PSNs) to be reimbursed on a prepaid basis.
- Authorizes the Agency for Health Care Administration (AHCA) to select eligible managed care plans to provide services through a single statewide procurement and deletes the requirement that the AHCA conduct separate and simultaneous procurements for each Medicaid region.
- Authorizes the AHCA to award contracts to managed care plans on a regional or statewide basis.
- Outlines a new regional structure for plan selection under the SMMC program's Managed Medical Assistance (MMA) and Long-Term Care (LTC) programs with a minimum and maximum number of plans designated for each region. The bill provides for eight regions named by letters (Regions A-H), rather than the 11 regions named by numbers (Regions 1-11) in current law.
- Requires the AHCA to award a contract to at least one PSN in each of the eight regions under the MMA program and under the LTC program.
- Requires managed care plans to include Florida cancer hospitals that meet specified federal criteria in their networks as essential providers.

- Revises MMA plan healthy behaviors program requirements to include tobacco cessation programs, rather than smoking cessation programs, and to clarify that substance abuse programs must include opioid abuse recovery.
- Authorizes an MMA Child Welfare Specialty Plan to serve a child in a permanent guardianship situation whose parents receive payments through the Guardianship Assistance Program.
- Deletes obsolete language.

The bill has a significant negative fiscal impact to the Florida Medicaid program. *See* Section V of this analysis.

The bill takes effect on July 1, 2022.

II. Present Situation:

Florida Medicaid Program

The Medicaid program is a joint federal-state program that finances health coverage for individuals, including eligible low-income adults, children, pregnant women, elderly adults, and persons with disabilities.[1] The Centers for Medicare & Medicaid Services (CMS) within the U.S. Department of Health and Human Services (HHS) is responsible for administering the federal Medicaid program. Florida Medicaid is the health care safety net for low-income Floridians. Florida's program is administered by the Agency for Health Care Administration (AHCA) and financed through state and federal funds.[2]

A Medicaid state plan is an agreement between a state and the federal government describing how the state administers its Medicaid programs. The state plan establishes groups of individuals covered under the Medicaid program, services that are provided, payment methodologies, and other administrative and organizational requirements.

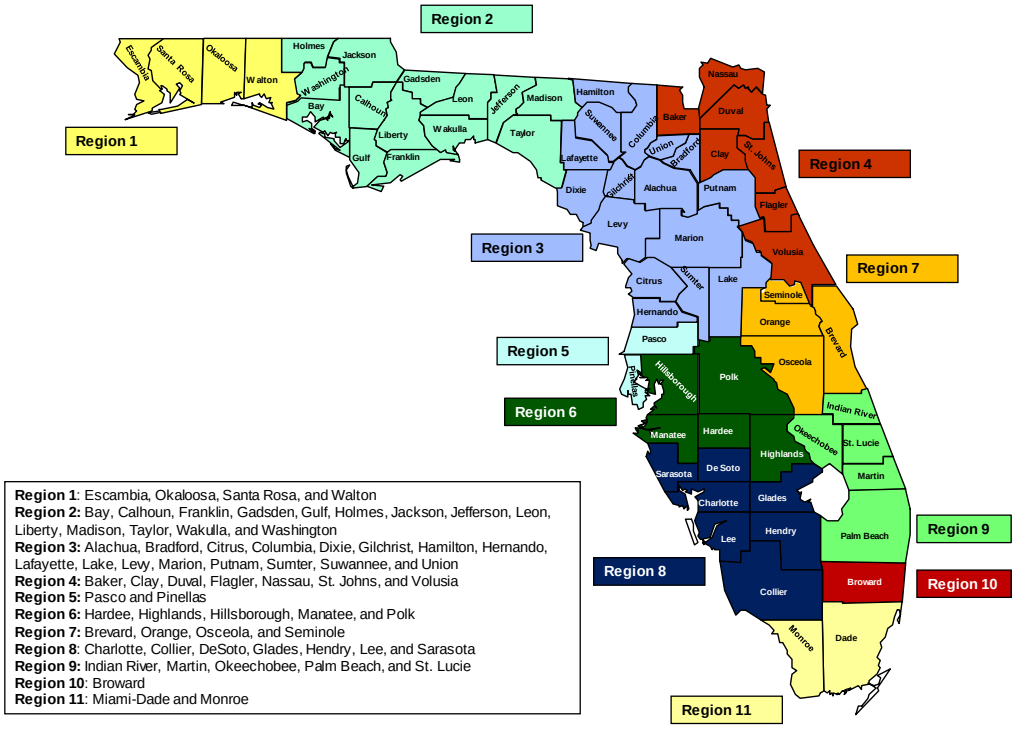
In order to participate in Medicaid, federal law requires states to cover certain population groups (mandatory eligibility groups) and gives states the flexibility to cover other population groups (optional eligibility groups). States set individual eligibility criteria within federal minimum standards. The AHCA may seek an amendment to the state plan as necessary to comply with federal or state laws or to implement program changes. States send state plan amendments to the federal CMS for review and approval.[3]

Medicaid enrollees generally receive benefits through one of two service-delivery systems: fee-for-service or managed care. Under fee-for-service, health care providers are paid by the state Medicaid program for each service provided to a Medicaid enrollee. Under managed care, the state contracts with private managed care plans for the coordination and payment of services for Medicaid enrollees. The state pays the managed care plans a capitation payment, or fixed monthly payment, per recipient enrolled in the managed care plan.

[1] Medicaid.gov, *Medicaid, available at* https://www.medicaid.gov/medicaid/index.html (last visited Jan. 23, 2022).
[2] Section 20.42, F.S.
[3] Medicaid.gov, *Medicaid State Plan Amendments, available at* https://www.medicaid.gov/medicaid/medicaid-state-plan-amendments/index.html (last visited Jan. 23, 2022).

Statewide Medicaid Managed Care (SMMC) Program

In 2011, the Legislature established the Medicaid program as a statewide, integrated managed care program for all covered services, and directed the AHCA to create the Statewide Medicaid Managed Care (SMMC) program and contract with managed care plans on a regional basis to provide services to eligible recipients.[4] The SMMC minimum benefits are authorized by federal authority and are specifically required in s. 409.973, F.S., for Managed Medical Assistance (MMA) plans and s. 409.98, F.S., for Long-Term Care (LTC) plans.



Today, the majority of Florida Medicaid recipients receive their services through a managed care plan contracted with the AHCA under the SMMC program. The SMMC program has three components:

- MMA: provides Medicaid covered medical services like doctor visits, hospital care, prescribed drugs, mental health care, and transportation to these services.[5]
- LTC: provides Medicaid LTC services like care in a nursing facility, assisted living, or at home. To get LTC you must be at least 18 years old and meet nursing home level of care (or meet hospital level of care if you have Cystic Fibrosis).[6]
- Dental: provides all Medicaid dental services for children and adults. All individuals on Medicaid must enroll in a dental plan.[7]
-

[4] Chapter 2011-134, Laws of Fla.
[5] Agency for Health Care Administration, *Statewide Medicaid Managed Care, Health Plans and Programs, available at* https://www.flmedicaidmanagedcare.com/health/comparehealthplans (last visited Feb. 9, 2022).
[6] *Id.*
[7] *Id.*

Eligible Plan Selection

The SMMC program was fully implemented in August 2014. During the initial SMMC procurement, the AHCA awarded contracts to 18 plans, including seven provider service networks (PSNs). By the end of the first contract period, due to various mergers, acquisitions, and conversions to HMO status, only one PSN remained.[8]

During the second procurement, beginning December 2018 and ending in December 2023, the AHCA awarded contracts to 16 plans, including five PSNs, but only three of the PSNs currently remain in the program due to mergers and acquisitions with a total of 10 health plans.[9] In 2020, the Legislature extended the allowable term of the SMMC contracts from five to six years.[10] As a result, the AHCA's current contracts will end in December 2024. The AHCA will conduct its next procurement in Fiscal Year 2022-2023 for implementation in the 2025 plan year.

Various mergers and acquisitions have occurred during the lifecycle of each SMMC contract, resulting in a situation where a majority of enrollees are receiving services from statewide plans that operate in all 11 regions. As of October 1, 2021, 40 percent of the SMMC population, including those enrolled in a specialty plan, were enrolled in a plan operating statewide and 79 percent were enrolled in a plan that operates in at least eight of the 11 regions. The chart below reflects the current operational SMMC plans in their designated regions as of October 1, 2021:[11]

SMMC Health Plans by Region (2018-2024)											
	1	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**
MMA Health Plans											
AmeriHealth									✓		✓
Community Care Plan										✓	
Simply Healthcare	✓	✓							✓		
Vivida Health								✓			
Comprehensive Plans (MMA & LTC Combined)											
Aetna Better Health						✓	✓				✓
Humana Medical Plan	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Molina Healthcare								✓			✓
Simply Healthcare					✓	✓	✓			✓	✓
Sunshine Health	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
United Healthcare			✓	✓		✓					✓
Specialty Plans											
CMS Plan	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Clear Health Alliance	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Molina SMI Specialty				✓	✓		✓				
Sunshine SMI Specialty	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sunshine Child Welfare	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

[8] Agency for Health Care Administration, 2022 Agency Legislative Bill Analysis for SB 1950, Jan. 19, 2022 (on file with the Senate Committee on Health Policy).
[9] *Id.*
[10] Chapter 2020-156, s. 44, Laws of Fla.
[11] Agency for Health Care Administration, *Statewide Medicaid Managed Care, available at* https://ahca.myflorida.com/medicaid/statewide_mc/pdf/mma/SMMC_Plans_by_Region.pdf (last visited Feb. 9, 2022).

Provider Service Networks (PSNs)

A PSN in the Medicaid program is a managed care plan established or organized and operated by a health care provider, or group of affiliated health care providers, which provides a substantial proportion of the health care items and services under a contract directly through the provider or affiliated group of providers and may make arrangements with physicians or other health care professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians, by other health professionals, or through the institutions.[12] The health care providers must have a controlling interest in the governing body of the PSN. The AHCA is authorized to contract with PSNs under s. 409.912(1), F.S., and may currently reimburse PSNs on a fee-for-service basis with a shared savings settlement or on a prepaid basis with per-member, per-month payments. A PSN may be reimbursed on a fee-for-service basis for only the first two years of the plan's operation.[13]

Specialty Plans[14]

An MMA managed care plan can participate in the MMA program as a standard plan or as a specialty plan. A specialty plan is a managed care plan that serves Medicaid recipients who meet specified criteria based on age, medical condition, or diagnosis.[15] Under federal Medicaid law and the SMMC waiver, each recipient has a choice of plans and may select any available plan unless that plan is restricted by contract to a specific population that does not include the recipient.[16] If a specialty plan is available to accommodate a specific condition or diagnosis of a Medicaid recipient, the AHCA must automatically enroll the recipient in that plan unless the recipient chooses a different plan.[17] MMA specialty plans cover the same health care services as the standard MMA plans, and in addition, they must maintain a care coordination program tailored to the special needs of the plan's enrollees.

When a recipient is eligible for more than one MMA specialty plan, the AHCA uses a ranking to determine which MMA specialty plan to assign. Unless the recipient chooses to enroll in another MMA specialty plan for which he or she is eligible, or in a standard MMA plan offered in his or her region, the recipient is automatically assigned to the specialty plan listed highest on the ranking. The AHCA has awarded specialty plan contracts to serve enrollees with specialty conditions including severe mental illness, HIV/AIDS, as well as children with special health care needs, and those involved with Florida's child welfare system.

[12] Section 409.912(1)(b), F.S.
[13] *Id.*
[14] Agency for Health Care Administration, *Medicaid Managed Medical Assistance Specialty Plans available at* https://ahca.myflorida.com/medicaid/statewide_mc/pdf/mma/Specialty_Plans_110316.pdf (last visited Jan. 23, 2022).
[15] Section 409.962(18), F.S.
[16] Section 409.969(1), F.S.
[17] Section 409.977(1), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 409.912(1), F.S., to eliminate fee-for-service (FFS) reimbursement of provider service networks (PSNs) in conjunction with changes made to s. 409.968(2), F.S., in section 6 of the bill. Under these changes, PSNs must be reimbursed on a prepaid basis, receiving a per-member, per-month payment. This section of the bill prohibits the Agency for Health Care Administration (AHCA) from contracting with a PSN outside of the procurement process in s. 409.966, F.S., as amended by section 4 of the bill.

Changes to this subsection relocate, but do not substantively change, language exempting PSNs from parts I and III of ch. 643, F.S.

Section 2 repeals obsolete language in s. 409.9124, F.S., relating to managed care plan reimbursement.

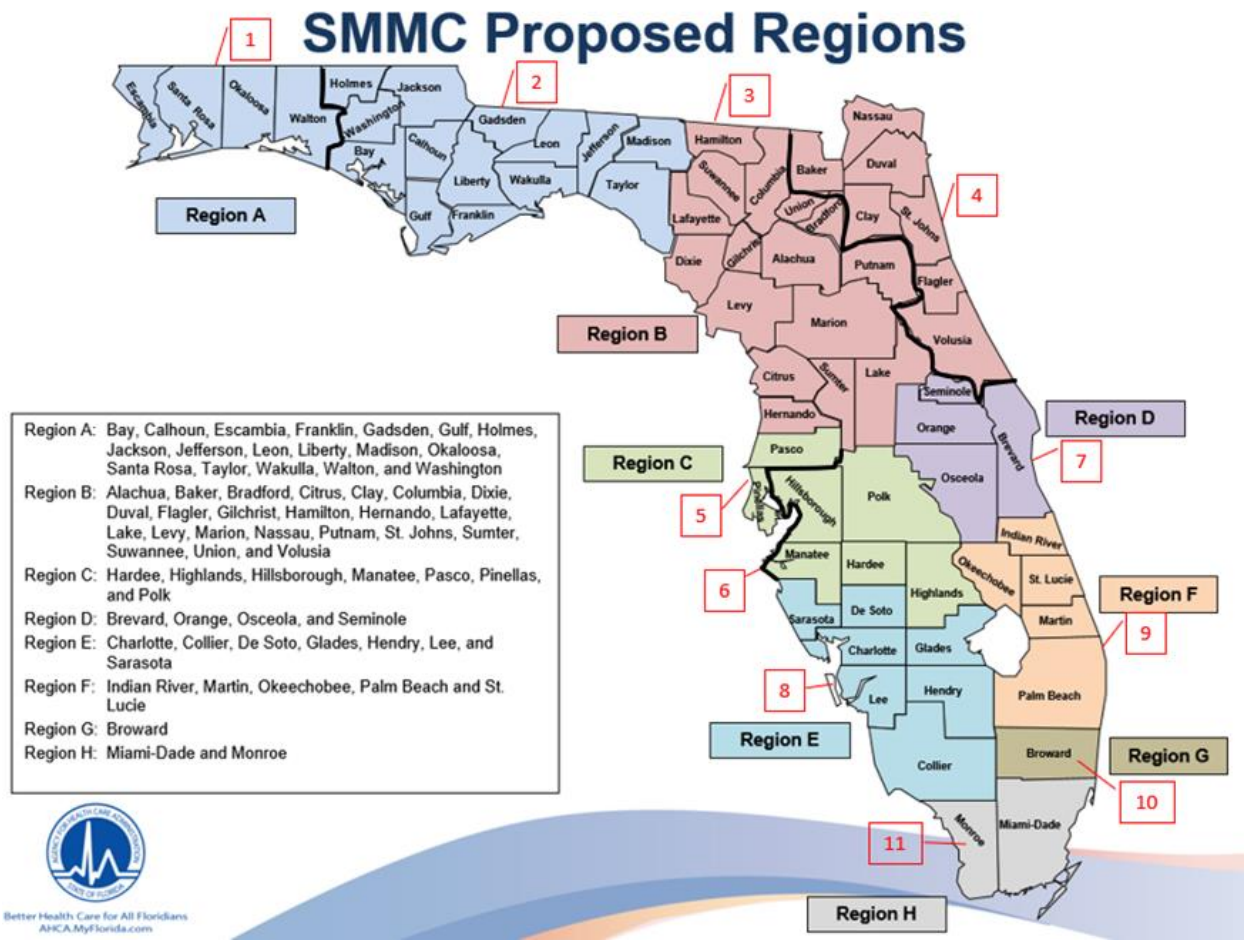
Section 3 amends s. 409.964, F.S., to eliminate an obsolete requirement that the AHCA provide public notice and the opportunity for public comment before seeking a waiver to implement the Statewide Medicaid Managed Care (SMMC) program. This language is obsolete as the public notice and public meeting requirements were met prior to the AHCA seeking federal authority to implement the SMMC program in 2011 and 2012.

Section 4 amends s. 409.966(2), F.S., to require the AHCA's databook consisting of Medicaid utilization and spending data (which must be published 90 days before issuing an invitation to negotiate) to include at least the 24 most recent months of data from the Medicaid Encounter Data System. This removes the requirement that the databook consist of data for the three most recent contract years, include historic fee-for-service claims, and delineate utilization by age, gender, eligibility group, geographic area, and aggregate clinical risk score.

This section of the bill deletes the requirement for the AHCA to conduct separate and simultaneous procurements for each Medicaid region and outlines a new structure for regional awards. The new structure includes eight regions named by letters (Regions A-H), rather than the 11 regions named by numbers (Regions 1-11) included in the original statute.

The following map and chart outline the eight regions proposed in the bill:[18]

[18] Agency for Health Care Administration, 2022 Agency Legislative Bill Analysis for SB 1950, Jan. 19, 2022 (on file with the Senate Committee on Health Policy).



Current	Counties	Proposed
Region 1	Escambia, Okaloosa, Santa Rosa, and Walton	**Region A**
Region 2	Bay, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Taylor, Wakulla, and Washington	
Region 3	Alachua, Bradford, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Lafayette, Lake, Levy, Marion, Putnam, Sumter, Suwannee, and Union	**Region B**
Region 4	Baker, Clay, Duval, Flagler, Nassau, St. Johns, and Volusia	
Region 5	Pasco and Pinellas	**Region C**
Region 6	Hardee, Highlands, Hillsborough, Manatee, and Polk	
Region 7	Brevard, Orange, Osceola, and Seminole	**Region D**
Region 8	Charlotte, Collier, DeSoto, Glades, Hendry, Lee, and Sarasota	**Region E**
Region 9	Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie	**Region F**
Region 10	Broward	**Region G**
Region 11	Miami-Dade and Monroe	**Region H**

This section of the bill also deletes obsolete language in s. 409.966(3)(d), F.S., that required the AHCA to negotiate capitation rates for the first year of the first contract term and in s. 409.966(3)(e), F.S., that awarded additional contracts to plans who are awarded contracts in

Regions 1 and 2. The AHCA indicates that due to the merger of Regions 1 and 2 into a single Region A, and because the bill provides for the award of statewide contracts, this provision is no longer needed.[19]

Section 5 amends s. 409.967, F.S., to delete obsolete language relating to plans contracting with hospital facilities that became licensed and operational before January 1, 2013. This section of the bill also deletes obsolete language requiring the AHCA to issue a request for information to determine whether cost savings could be achieved through oversight and management by the end of the fourth year of the first contract term.

Section 6 amends s. 409.968(2), F.S., to delete language allowing PSNs to receive fee-for-service rates with a shared savings settlement. In conjunction with changes made to s. 409.912. F.S., in section 1 of this bill, the bill requires all PSNs to be prepaid plans, receiving a per-member, per-month payment, and be negotiated pursuant to the procurement process in s. 409.966, F.S.

Section 7 amends s. 409.973, F.S., to revise language related to Healthy Behaviors programs which Managed Medical Assistance (MMA) plans are required to establish to encourage and reward healthy behaviors. The bill requires each plan to establish a "tobacco cessation program" rather than a "smoking cessation program" to ensure that each program also includes smokeless tobacco products. It also requires an MMA plan's substance abuse recovery program to include opioid abuse recovery.

This section of the bill also deletes obsolete language in 409.97(4)(b), F.S., relating to the Primary Care Initiative, which requires the plans to schedule an appointment with a primary care provider for enrollees who became eligible for Medicaid between January 1, 2014 and December 31, 2015, within 6 months of enrollment in the plan.

Section 8 amends s. 409.974(1), F.S., to outline the structure for plan selection under the MMA program. This section authorizes the AHCA to select eligible plans to provide services through a single statewide procurement and to award contracts to plans on a regional or statewide basis. It requires the AHCA to award a contract to at least one PSN in each of the 8 regions and to procure:

- 3-4 plans for Region A
- 3-6 plans for Region B
- 5-10 plans for Region C
- 3-6 plans for Region D
- 3-4 plans for Region E
- 3-5 plans for Region F
- 3-5 plans for Region G
- 5-10 plans for Region H

This section of the bill also amends s. 409.974(2), F.S., to eliminate the requirement that the AHCA exercise a preference for plans with a provider network in which over 10 percent of the

[19] Agency for Health Care Administration, 2022 Agency Legislative Bill Analysis for SB 1950, Jan. 19, 2022 (on file with the Senate Committee on Health Policy).

providers use electronic health records. It is estimated that 80 percent of providers currently use electronic health records.[20]

Section 9 amends s. 409.975(1)(b), F.S., to expand the list of statewide essential providers to include Florida cancer hospitals that meet the criteria in 42 U.S.C. s. 1395ww(d)(1)(B)(v). Currently, Moffitt Cancer Center in Tampa and Sylvester Comprehensive Cancer Center in Miami meet this criteria. Under the bill, managed care plans would be required to include these cancer hospitals in their networks as essential providers.

Section 10 amends s. 409.977, F.S., to revise and relocate the requirement for the AHCA to maintain a recipient's enrollment in a plan if a recipient was enrolled in a plan immediately before the recipient's choice period and that plan is still available in the region, unless an applicable specialty plan is available from subsection (1) to subsection (2).

This section of the bill deletes the obsolete requirement in s. 409.977(4), F.S., for the AHCA to seek federal approval to develop and implement a process to enable a Medicaid recipient with access to employer-sponsored health care coverage to opt out of all managed care plans and to use Medicaid financial assistance to pay for the recipient's share of the cost in such employer-sponsored coverage. The AHCA has already obtained federal approval for what has come to be known as their Health Insurance Premium Payment (HIPP) program[21] and continues to implement this program.[22] As of August 2021, 53 recipients were participating in the HIPP program.[23]

This section of the bill also amends s. 409.977(5), F.S., to authorize a child welfare specialty managed care plan under contract with the MMA program to serve a child in a permanent guardianship situation.[24] Specifically, such a child must continue to be eligible for Medicaid and must receive guardianship assistance payments under the Guardianship Assistance Program. Currently, only children in foster care, extended foster care, or subsidized adoption are eligible for the child welfare specialty plan.

Section 11 amends s. 409.981, F.S., to outline the structure for plan selection under the Long-Term Care program. Tracking the structure for MMA plan selection above in section 8 of this bill, except as noted, this section authorizes the AHCA to select eligible plans to provide services through a single statewide procurement and to award contracts to plans on a regional or

[20] Email from Legislative Affairs Director, Agency for Health Care Administration, to Senate Committee on Health Policy Staff (Jan. 24, 2022) (on file with the Senate Committee on Health Policy).
[21] *See* Rule 59G-7.007, F.A.C.
[22] The Agency for Health Care Administration reports that for the 2020 calendar year, $95,388.79 was spent on premium reimbursements through the HIPP program. From January to August of 2021, $912,363.87 was spent on premium reimbursements through the program. Agency for Health Care Administration, 2022 Agency Legislative Bill Analysis for SB 1950, Jan. 19, 2022 (on file with the Senate Committee on Health Policy).
[23] Email from Legislative Affairs Director, Agency for Health Care Administration, to Senate Committee on Health Policy Staff (Jan. 24, 2022) (on file with the Senate Committee on Health Policy).
[24] For more information on the Sunshine Health Child Welfare Specialty Plan and the Guardianship Assistance Program, *see* Florida Senate Bill Analysis and Fiscal Impact Statement for CS/SB 1080, Jan. 19, 2022 *available* at https://www.flsenate.gov/Session/Bill/2022/1080/Analyses/2022s01080.hp.PDF (last visited Jan. 23, 2022). The provisions of CS/SB 1080 are identical to the changes made to s. 409.977(5), F.S., in this bill.

statewide basis. It requires the AHCA to award a contract to at least one PSN in each of the eight regions and to procure:

- 3-4 plans for Region A
- 3-6 plans for Region B
- 5-10 plans for Region C
- 3-6 plans for Region D
- 3-4 plans for Region E
- 3-5 plans for Region F
- 3-4 plans for Region G[25]
- 5-10 plans for region H

Section 12 amends s. 409.8132, F.S., to conform a cross-reference to changes made in bill section 2 which repeals s. 409.9124, F.S.

Section 13 reenacts s. 409.962, F.S., to incorporate changes made by this act to s. 409.912, F.S., in bill section 1.

Section 14 reenacts s. 641.19, F.S., to incorporate changes made by this act to s. 409.912, F.S., in bill section 1.

Section 15 reenacts s. 430.2053, F.S., to incorporate changes made by this act to s. 409.981, F.S., in bill section 11.

Section 16 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.

[25] Note that the Agency for Health Care Administration must award 3-5 MMA plans for Region G under bill section 8.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The capitation rate for children in the Child Welfare Specialty Plan is higher than the rates for most children in other plans. If children become eligible and receive services through the Child Welfare Specialty Plan as authorized in the bill, the bill will have a significant negative fiscal impact to the Florida Medicaid program. The AHCA estimates a maximum recurring fiscal impact of $12.2 million ($4.7 million General Revenue) based on a rate year 2020-2021 estimate of 4,120 children who currently would be eligible for the change in plans.[26]

The precise fiscal impact of children becoming newly eligible for the Child Welfare Specialty Plans cannot be calculated without knowing the Medicaid region in which an eligible child resides and the capitation rate category in which the child is currently categorized. This is because Medicaid capitation rates vary by region and children could be in different rate cells based on age, gender, Medicaid eligibility category, and other characteristics.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.912, 409.964, 409.966, 409.967, 409.968, 409.973, 409.974, 409.975, 409.977, 409.981, and 409.8132.

This bill repeals section 409.9124 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 409.962, 641.19, and 430.2053.

[26] Agency for Health Care Administration, 2022 Agency Legislative Bill Analysis for SB 1950, Jan. 19, 2022 (on file with the Senate Committee on Health Policy).

IX. Additional Information:

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

PCS (625186) by Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services):
The proposed committee substitute removes the achieved savings rebate provisions from the bill and maintains current law.

CS by Health Policy on January 26, 2022:
The CS corrects a drafting error in the underlying bill that would have inadvertently deleted the AHCA's existing authority to implement the HIPP program. The amendment keeps the HIPP program intact and removes obsolete language from statute regarding already-obtained federal approval to implement the program.

B. Amendments:

None.

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

376938

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2022	.	
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	.	
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The Committee on Appropriations (Brodeur) recommended the following:

Senate Amendment

Delete lines 220 - 249

and insert:

Medicaid Encounter Data System, and the databook must~~. The report must be available in electronic form and~~ delineate utilization use by age, gender, eligibility group, geographic area, and aggregate clinical risk score. The statewide managed care program includes ~~Separate and simultaneous procurements shall be conducted in each of~~ the following regions:

376938

(a) Region A ~~1~~, which consists of Bay, Calhoun, Escambia, ~~Okaloosa, Santa Rosa, and Walton Counties.~~

~~(b) Region 2, which consists of Bay, Calhoun,~~ Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, and Washington Counties.

(b) ~~(c)~~ Region B ~~3~~, which consists of Alachua, Baker, Bradford, Citrus, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Hernando, Lafayette, Lake, Levy, Marion, Nassau, Putnam, St. Johns, Sumter, Suwannee, ~~and~~ Union ~~Counties.~~

~~(d) Region 4, which consists of Baker, Clay, Duval, Flagler, Nassau, St. Johns~~, and Volusia Counties.

(c) ~~(e)~~ Region C ~~5~~, which consists of Pasco and Pinellas Counties.

(d) ~~(f)~~ Region D ~~6~~, which consists of Hardee, Highlands, Hillsborough, Manatee, and Polk Counties.

(e) ~~(g)~~ Region E ~~7~~, which consists of Brevard, Orange, Osceola, and Seminole Counties.

(f) ~~(h)~~ Region F ~~8~~, which consists of Charlotte, Collier, DeSoto, Glades, Hendry, Lee, and Sarasota Counties.

(g) ~~(i)~~ Region G ~~9~~, which consists of Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie Counties.

(h) ~~(j)~~ Region H ~~10~~, which consists of Broward County.

(i) ~~(k)~~ Region I ~~11~~, which consists of Miami-Dade and Monroe

567896

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2022	.	
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	.	
	.	

The Committee on Appropriations (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Delete lines 573 - 636

and insert:

regional or statewide basis. The agency shall procure:

(a) At least 3 plans and up to 4 plans for Region A.

(b) At least 3 plans and up to 6 plans for Region B.

(c) At least 3 plans and up to 5 plans for Region C.

(d) At least 4 plans and up to 7 plans for Region D.

(e) At least 3 plans and up to 6 plans for Region E.



(f) At least 3 plans and up to 4 plans for Region F.

(g) At least 3 plans and up to 5 plans for Region G.

(h) At least 3 plans and up to 5 plans for Region H.

(i) At least 5 plans and up to 10 plans for Region I. ~~The agency shall notice invitations to negotiate no later than January 1, 2013.~~

~~(a) The agency shall procure two plans for Region 1. At least one plan shall be a provider service network if any provider service networks submit a responsive bid.~~

~~(b) The agency shall procure two plans for Region 2. At least one plan shall be a provider service network if any provider service networks submit a responsive bid.~~

~~(c) The agency shall procure at least three plans and up to five plans for Region 3. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(d) The agency shall procure at least three plans and up to five plans for Region 4. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(e) The agency shall procure at least two plans and up to four plans for Region 5. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(f) The agency shall procure at least four plans and up to seven plans for Region 6. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(g) The agency shall procure at least three plans and up to~~



~~six plans for Region 7. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(h) The agency shall procure at least two plans and up to four plans for Region 8. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(i) The agency shall procure at least two plans and up to four plans for Region 9. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(j) The agency shall procure at least two plans and up to four plans for Region 10. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(k) The agency shall procure at least five plans and up to 10 plans for Region 11. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~If no provider service network submits a responsive bid, the agency shall procure no more than one less than the maximum number of eligible plans permitted in that region. Within 12 months after the initial invitation to negotiate, the agency shall attempt to procure a provider service network. The agency shall notice another invitation to negotiate only with provider service networks in those regions where no provider service network has been selected.~~

567896

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 41
and insert:
provisions to changes made by the act; deleting procedures for plan procurements when no provider service networks submit bids; deleting a

977740

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2022	.	
	.	
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	.	

The Committee on Appropriations (Bean) recommended the following:

Senate Amendment to Amendment (567896)

Delete line 5
and insert:
regional or statewide basis. The awards must include at least one provider service network in each of the nine regions outlined in this subsection. The agency shall procure:

399056

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2022	.	
	.	
	.	
	.	

The Committee on Appropriations (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Delete lines 690 - 692

and insert:

to nonparticipating specialty children's hospitals, and payments to nonparticipating Florida cancer hospitals that meet the criteria in 42 U.S.C. s. 1395ww(d)(1)(B)(v), shall equal the highest rate established by contract between that provider and any other Medicaid managed care plan.

Section 10. The Agency for Health Care Administration shall

399056

amend existing Statewide Medicaid Managed Care contracts to implement the changes made by this act to sections 409.973, 409.975, and 409.977, Florida Statutes. The agency shall implement the changes made by this act to sections 409.966, 409.974, and 409.981, Florida Statutes, for the 2025 plan year.

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

And the title is amended as follows:

Delete line 45

and insert:

criteria are statewide essential providers; requiring payments to such hospitals to equal a certain rate; requiring the agency to amend existing Statewide Medicaid Managed Care contracts to implement changes made by the act; requiring the agency to implement changes made by the act for a specified plan year; amending

963780

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2022	.	
	.	
	.	
	.	

The Committee on Appropriations (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Delete lines 761 - 813

and insert:

or statewide basis. The agency shall procure:

(a) At least 3 plans and up to 4 plans for Region A.

(b) At least 3 plans and up to 6 plans for Region B.

(c) At least 3 plans and up to 5 plans for Region C.

(d) At least 4 plans and up to 7 plans for Region D.

(e) At least 3 plans and up to 6 plans for Region E.

963780

(f) At least 3 plans and up to 4 plans for Region F.

(g) At least 3 plans and up to 5 plans for Region G.

(h) At least 3 plans and up to 4 plans for Region H.

(i) At least 5 plans and up to 10 plans for Region I ~~Two plans for Region 1. At least one plan must be a provider service network if any provider service networks submit a responsive bid~~.

~~(b) Two plans for Region 2. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(c) At least three plans and up to five plans for Region 3. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(d) At least three plans and up to five plans for Region 4. At least one plan must be a provider service network if any provider service network submits a responsive bid.~~

~~(e) At least two plans and up to four plans for Region 5. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(f) At least four plans and up to seven plans for Region 6. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(g) At least three plans and up to six plans for Region 7. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(h) At least two plans and up to four plans for Region 8. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(i) At least two plans and up to four plans for Region 9.~~

963780

~~At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(j) At least two plans and up to four plans for Region 10. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(k) At least five plans and up to 10 plans for Region 11. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~If no provider service network submits a responsive bid in a region other than Region 1 or Region 2, the agency shall procure no more than one less than the maximum number of eligible plans permitted in that region. Within 12 months after the initial invitation to negotiate, the agency shall attempt to procure a provider service network. The agency shall notice another invitation to negotiate only with provider service networks in regions where no provider service network has been selected.~~

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

And the title is amended as follows:

Delete line 59

and insert:

changes made by the act; deleting procedures for plan procurements when no provider service networks submit bids; amending s. 409.8132, F.S.;

329278

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2022	.	
	.	
	.	
	.	

The Committee on Appropriations (Bean) recommended the following:

Senate Amendment to Amendment (963780)

Delete line 5
and insert:
or statewide basis. The awards must include at least one provider service network in each of the nine regions outlined in this subsection. The agency shall procure:


625186

576-03085-22

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

A bill to be entitled

An act relating to the statewide Medicaid managed care program; amending s. 409.912, F.S.; requiring, rather than authorizing, that the reimbursement method for provider service networks be on a prepaid basis; deleting the authority to reimburse provider service networks on a fee-for-service basis; conforming provisions to changes made by the act; providing that provider service networks are subject to and exempt from certain requirements; providing construction; repealing s. 409.9124, F.S., relating to managed care reimbursement; amending s. 409.964, F.S.; deleting a requirement that the Agency for Health Care Administration provide the opportunity for public feedback on a certain waiver application; amending s. 409.966, F.S.; revising requirements relating to the databook published by the agency consisting of Medicaid utilization and spending data; reallocating regions within the statewide managed care program; deleting a requirement that the agency negotiate plan rates or payments to guarantee a certain savings amount; deleting a requirement for the agency to award additional contracts to plans in specified regions for certain purposes; revising a limitation on when plans may begin serving Medicaid recipients to apply to any eligible plan that participates in an invitation to negotiate, rather than plans participating in certain


625186

576-03085-22

regions; making technical changes; amending s. 409.967, F.S.; deleting obsolete provisions; amending s. 409.968, F.S.; conforming provisions to changes made by the act; amending s. 409.973, F.S.; revising requirements for healthy behaviors programs established by plans; deleting an obsolete provision; amending s. 409.974, F.S.; requiring the agency to select plans for the managed medical assistance program through a single statewide procurement; authorizing the agency to award contracts to plans on a regional or statewide basis; specifying requirements for minimum numbers of plans which the agency must procure for each specified region; conforming provisions to changes made by the act; deleting a requirement for the agency to exercise a preference for certain plans; amending s. 409.975, F.S.; providing that cancer hospitals meeting certain criteria are statewide essential providers; amending s. 409.977, F.S.; revising the circumstances for maintaining a recipient’s enrollment in a plan; deleting obsolete language; authorizing specialty plans to serve certain children who receive guardianship assistance payments under the Guardianship Assistance Program; amending s. 409.981, F.S.; requiring the agency to select plans for the long-term care managed medical assistance program through a single statewide procurement; authorizing the agency to award contracts to plans on a regional or statewide basis; specifying requirements for

minimum numbers of plans which the agency must procure for each specified region; conforming provisions to changes made by the act; amending s. 409.8132, F.S.; conforming a cross-reference; reenacting ss. 409.962(1), (7), (13), and (14) and 641.19(22) relating to definitions, to incorporate the amendments made by this act to s. 409.912, F.S., in references thereto; reenacting s. 430.2053(3)(h), (i), and (j) and (11), relating to aging resource centers, to incorporate the amendments made by this act to s. 409.981, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (1) of section 409.912, Florida Statutes, is amended to read:

409.912 Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. To ensure that medical services are effectively utilized, the agency may, in any case, require a confirmation or second physician’s opinion of the correct diagnosis for purposes of authorizing future services under the Medicaid program. This section does not restrict access to emergency services or poststabilization care services as defined in 42 C.F.R. s. 438.114. Such confirmation or second opinion shall be rendered in a manner approved by the agency. The agency shall maximize the use of prepaid per capita and prepaid

aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies, including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed continuum of care. The agency shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services. The agency shall contract with a vendor to monitor and evaluate the clinical practice patterns of providers in order to identify trends that are outside the normal practice patterns of a provider’s professional peers or the national guidelines of a provider’s professional association. The vendor must be able to provide information and counseling to a provider whose practice patterns are outside the norms, in consultation with the agency, to improve patient care and reduce inappropriate utilization. The agency may mandate prior authorization, drug therapy management, or disease management participation for certain populations of Medicaid beneficiaries, certain drug classes, or particular drugs to prevent fraud, abuse, overuse, and possible dangerous drug interactions. The Pharmaceutical and Therapeutics Committee shall make recommendations to the agency on drugs for which prior authorization is required. The agency shall inform the Pharmaceutical and Therapeutics Committee of its decisions regarding drugs subject to prior authorization. The agency is authorized to limit the entities it contracts with or enrolls as Medicaid providers by developing a provider network through provider credentialing. The agency may competitively bid single-source-provider contracts if procurement of goods or services


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results in demonstrated cost savings to the state without limiting access to care. The agency may limit its network based on the assessment of beneficiary access to care, provider availability, provider quality standards, time and distance standards for access to care, the cultural competence of the provider network, demographic characteristics of Medicaid beneficiaries, practice and provider-to-beneficiary standards, appointment wait times, beneficiary use of services, provider turnover, provider profiling, provider licensure history, previous program integrity investigations and findings, peer review, provider Medicaid policy and billing compliance records, clinical and medical record audits, and other factors. Providers are not entitled to enrollment in the Medicaid provider network. The agency shall determine instances in which allowing Medicaid beneficiaries to purchase durable medical equipment and other goods is less expensive to the Medicaid program than long-term rental of the equipment or goods. The agency may establish rules to facilitate purchases in lieu of long-term rentals in order to protect against fraud and abuse in the Medicaid program as defined in s. 409.913. The agency may seek federal waivers necessary to administer these policies.

(1) The agency may contract with a provider service network, which must ~~may~~ be reimbursed on a ~~fee-for-service or~~ prepaid basis. ~~Prepaid~~ Provider service networks shall receive per-member, per-month payments. ~~A provider service network that does not choose to be a prepaid plan shall receive fee-for-service rates with a shared savings settlement. The fee-for-service option shall be available to a provider service network only for the first 2 years of the plan's operation or until the~~


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~~contract year beginning September 1, 2014, whichever is later. The agency shall annually conduct cost reconciliations to determine the amount of cost savings achieved by fee-for-service provider service networks for the dates of service in the period being reconciled. Only payments for covered services for dates of service within the reconciliation period and paid within 6 months after the last date of service in the reconciliation period shall be included. The agency shall perform the necessary adjustments for the inclusion of claims incurred but not reported within the reconciliation for claims that could be received and paid by the agency after the 6 month claims processing time lag. The agency shall provide the results of the reconciliations to the fee-for-service provider service networks within 45 days after the end of the reconciliation period. The fee-for-service provider service networks shall review and provide written comments or a letter of concurrence to the agency within 45 days after receipt of the reconciliation results. This reconciliation shall be considered final.~~

~~(a) A provider service network which is reimbursed by the agency on a prepaid basis shall be exempt from parts I and III of chapter 641 but must comply with the solvency requirements in s. 641.2261(2) and meet appropriate financial reserve, quality assurance, and patient rights requirements as established by the agency.~~

~~(b)~~ A provider service network is a network established or organized and operated by a health care provider, or group of affiliated health care providers, which provides a substantial proportion of the health care items and services under a contract directly through the provider or affiliated group of

providers and may make arrangements with physicians or other health care professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians, by other health professionals, or through the institutions. The health care providers must have a controlling interest in the governing body of the provider service network organization.

(a) A provider service network is exempt from parts I and III of chapter 641 but must comply with the solvency requirements in s. 641.2261(2) and meet appropriate financial reserve, quality assurance, and patient rights requirements as established by the agency.

(b) This subsection does not authorize the agency to contract with a provider service network outside of the procurement process described in s. 409.966.

Section 2. Section 409.9124, Florida Statutes, is repealed.

Section 3. Section 409.964, Florida Statutes, is amended to read:

409.964 Managed care program; state plan; waivers.—The Medicaid program is established as a statewide, integrated managed care program for all covered services, including long-term care services. The agency shall apply for and implement state plan amendments or waivers of applicable federal laws and regulations necessary to implement the program. ~~Before seeking a waiver, the agency shall provide public notice and the opportunity for public comment and include public feedback in the waiver application. The agency shall hold one public meeting in each of the regions described in s. 409.966(2), and the time~~

~~period for public comment for each region shall end no sooner than 30 days after the completion of the public meeting in that region.~~

Section 4. Subsections (2), (3), and (4) of section 409.966, Florida Statutes, are amended to read:

409.966 Eligible plans; selection.—

(2) ELIGIBLE PLAN SELECTION.—The agency shall select a limited number of eligible plans to participate in the Medicaid program using invitations to negotiate in accordance with s. 287.057(1)(c). At least 90 days before issuing an invitation to negotiate, the agency shall compile and publish a databook consisting of a comprehensive set of utilization and spending data consistent with actuarial rate-setting practices and standards ~~for the 3 most recent contract years consistent with the rate-setting periods for all Medicaid recipients by region or county~~. The source of the data in the databook ~~report~~ must include, at a minimum, the 24 most recent months of ~~both historic fee-for-service claims and~~ validated data from the Medicaid Encounter Data System. The statewide managed care program includes ~~report must be available in electronic form and delineate utilization use by age, gender, eligibility group, geographic area, and aggregate clinical risk score. Separate and simultaneous procurements shall be conducted in each of~~ the following regions:

(a) Region A ~~1~~, which consists of Bay, Calhoun, Escambia, ~~Okaloosa, Santa Rosa, and Walton Counties.~~

~~(b) Region 2, which consists of Bay, Calhoun,~~ Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, and

Washington Counties.

(b) ~~(c)~~ Region B ~~3~~, which consists of Alachua, Baker, Bradford, Citrus, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Hernando, Lafayette, Lake, Levy, Marion, Nassau, Putnam, St. Johns, Sumter, Suwannee, ~~and~~ Union ~~Counties.~~

~~(d) Region 4, which consists of Baker, Clay, Duval, Flagler, Nassau, St. Johns~~, and Volusia Counties.

(c) ~~(e)~~ Region C ~~5~~, which consists of ~~Pasco and Pinellas Counties.~~

~~(f) Region 6, which consists of~~ Hardee, Highlands, Hillsborough, Manatee, Pasco, Pinellas, and Polk Counties.

(d) ~~(g)~~ Region D ~~7~~, which consists of Brevard, Orange, Osceola, and Seminole Counties.

(e) ~~(h)~~ Region E ~~8~~, which consists of Charlotte, Collier, DeSoto, Glades, Hendry, Lee, and Sarasota Counties.

(f) ~~(i)~~ Region F ~~9~~, which consists of Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie Counties.

(g) ~~(j)~~ Region G ~~10~~, which consists of Broward County.

(h) ~~(k)~~ Region H ~~11~~, which consists of Miami-Dade and Monroe Counties.

(3) QUALITY SELECTION CRITERIA.—

(a) The invitation to negotiate must specify the criteria and the relative weight of the criteria that will be used for determining the acceptability of the reply and guiding the selection of the organizations with which the agency negotiates. In addition to criteria established by the agency, the agency shall consider the following factors in the selection of eligible plans:

1. Accreditation by the National Committee for Quality

Assurance, the Joint Commission, or another nationally recognized accrediting body.

2. Experience serving similar populations, including the organization's record in achieving specific quality standards with similar populations.

3. Availability and accessibility of primary care and specialty physicians in the provider network.

4. Establishment of community partnerships with providers that create opportunities for reinvestment in community-based services.

5. Organization commitment to quality improvement and documentation of achievements in specific quality improvement projects, including active involvement by organization leadership.

6. Provision of additional benefits, particularly dental care and disease management, and other initiatives that improve health outcomes.

7. Evidence that an eligible plan has obtained signed contracts or written agreements or ~~signed contracts or~~ has made substantial progress in establishing relationships with providers before the plan submits ~~submitting~~ a response.

8. Comments submitted in writing by any enrolled Medicaid provider relating to a specifically identified plan participating in the procurement in the same region as the submitting provider.

9. Documentation of policies and procedures for preventing fraud and abuse.

10. The business relationship an eligible plan has with any other eligible plan that responds to the invitation to

negotiate.

(b) An eligible plan must disclose any business relationship it has with any other eligible plan that responds to the invitation to negotiate. The agency may not select plans in the same region for the same managed care program that have a business relationship with each other. Failure to disclose any business relationship shall result in disqualification from participation in any region for the first full contract period after the discovery of the business relationship by the agency. For the purpose of this section, "business relationship" means an ownership or controlling interest, an affiliate or subsidiary relationship, a common parent, or any mutual interest in any limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly or partially owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities, business associations, or other enterprises, that exists for the purpose of making a profit.

(c) After negotiations are conducted, the agency shall select the eligible plans that are determined to be responsive and provide the best value to the state. Preference shall be given to plans that:

1. Have signed contracts with primary and specialty physicians in sufficient numbers to meet the specific standards established pursuant to s. 409.967(2)(c).

2. Have well-defined programs for recognizing patient-centered medical homes and providing for increased compensation for recognized medical homes, as defined by the plan.

3. Are organizations that are based in and perform

operational functions in this state, in-house or through contractual arrangements, by staff located in this state. Using a tiered approach, the highest number of points shall be awarded to a plan that has all or substantially all of its operational functions performed in the state. The second highest number of points shall be awarded to a plan that has a majority of its operational functions performed in the state. The agency may establish a third tier; however, preference points may not be awarded to plans that perform only community outreach, medical director functions, and state administrative functions in the state. For purposes of this subparagraph, operational functions include corporate headquarters, claims processing, member services, provider relations, utilization and prior authorization, case management, disease and quality functions, and finance and administration. For purposes of this subparagraph, the term "corporate headquarters" means the principal office of the organization, which may not be a subsidiary, directly or indirectly through one or more subsidiaries of, or a joint venture with, any other entity whose principal office is not located in the state.

4. Have contracts or other arrangements for cancer disease management programs that have a proven record of clinical efficiencies and cost savings.

5. Have contracts or other arrangements for diabetes disease management programs that have a proven record of clinical efficiencies and cost savings.

6. Have a claims payment process that ensures that claims that are not contested or denied will be promptly paid pursuant to s. 641.3155.

~~(d) For the first year of the first contract term, the agency shall negotiate capitation rates or fee for service payments with each plan in order to guarantee aggregate savings of at least 5 percent.~~

~~1. For prepaid plans, determination of the amount of savings shall be calculated by comparison to the Medicaid rates that the agency paid managed care plans for similar populations in the same areas in the prior year. In regions containing no prepaid plans in the prior year, determination of the amount of savings shall be calculated by comparison to the Medicaid rates established and certified for those regions in the prior year.~~

~~2. For provider service networks operating on a fee-for-service basis, determination of the amount of savings shall be calculated by comparison to the Medicaid rates that the agency paid on a fee-for-service basis for the same services in the prior year.~~

~~(c) To ensure managed care plan participation in Regions 1 and 2, the agency shall award an additional contract to each plan with a contract award in Region 1 or Region 2. Such contract shall be in any other region in which the plan submitted a responsive bid and negotiates a rate acceptable to the agency. If a plan that is awarded an additional contract pursuant to this paragraph is subject to penalties pursuant to s. 409.967(2)(i) for activities in Region 1 or Region 2, the additional contract is automatically terminated 180 days after the imposition of the penalties. The plan must reimburse the agency for the cost of enrollment changes and other transition activities.~~

(d) ~~(f)~~ The agency may not execute contracts with managed

care plans at payment rates not supported by the General Appropriations Act.

(4) ADMINISTRATIVE CHALLENGE.—Any eligible plan that participates in an invitation to negotiate ~~in more than one region and is selected in at least one region~~ may not begin serving Medicaid recipients ~~in any region for which it was selected~~ until all administrative challenges to procurements required by this section to which the eligible plan is a party have been finalized. If the number of plans selected is less than the maximum amount of plans permitted in the region, the agency may contract with other selected plans in the region not participating in the administrative challenge before resolution of the administrative challenge. For purposes of this subsection, an administrative challenge is finalized if an order granting voluntary dismissal with prejudice has been entered by any court established under Article V of the State Constitution or by the Division of Administrative Hearings, a final order has been entered into by the agency and the deadline for appeal has expired, a final order has been entered by the First District Court of Appeal and the time to seek any available review by the Florida Supreme Court has expired, or a final order has been entered by the Florida Supreme Court and a warrant has been issued.

Section 5. Paragraphs (c) and (f) of subsection (2) of section 409.967, Florida Statutes, are 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:

(c) *Access.*—

1. The agency shall establish specific standards for the number, type, and regional distribution of providers in managed care plan networks to ensure access to care for both adults and children. Each plan must maintain a regionwide network of providers in sufficient numbers to meet the access standards for specific medical services for all recipients enrolled in the plan. The exclusive use of mail-order pharmacies may not be sufficient to meet network access standards. Consistent with the standards established by the agency, provider networks may include providers located outside the region. ~~A plan may contract with a new hospital facility before the date the hospital becomes operational if the hospital has commenced construction, will be licensed and operational by January 1, 2013, and a final order has issued in any civil or administrative challenge.~~ Each plan shall establish and maintain an accurate and complete electronic database of contracted providers, including information about licensure or registration, locations and hours of operation, specialty credentials and other certifications, specific performance indicators, and such other information as the agency deems necessary. The database must be available online to both the agency and the public and have the capability to compare the availability of providers to network adequacy standards and to accept and display feedback from each provider's patients. Each plan shall submit quarterly reports to the agency identifying the number of enrollees assigned to each primary care provider. The agency shall conduct, or contract for, systematic and

continuous testing of the provider network databases maintained by each plan to confirm accuracy, confirm that behavioral health providers are accepting enrollees, and confirm that enrollees have access to behavioral health services.

2. Each managed care plan must publish any prescribed drug formulary or preferred drug list on the plan's website in a manner that is accessible to and searchable by enrollees and providers. The plan must update the list within 24 hours after making a change. Each plan must ensure that the prior authorization process for prescribed drugs is readily accessible to health care providers, including posting appropriate contact information on its website and providing timely responses to providers. For Medicaid recipients diagnosed with hemophilia who have been prescribed anti-hemophilic-factor replacement products, the agency shall provide for those products and hemophilia overlay services through the agency's hemophilia disease management program.

3. Managed care plans, and their fiscal agents or intermediaries, must accept prior authorization requests for any service electronically.

4. Managed care plans serving children in the care and custody of the Department of Children and Families must maintain complete medical, dental, and behavioral health encounter information and participate in making such information available to the department or the applicable contracted community-based care lead agency for use in providing comprehensive and coordinated case management. The agency and the department shall establish an interagency agreement to provide guidance for the format, confidentiality, recipient, scope, and method of

information to be made available and the deadlines for submission of the data. The scope of information available to the department shall be the data that managed care plans are required to submit to the agency. The agency shall determine the plan's compliance with standards for access to medical, dental, and behavioral health services; the use of medications; and followup on all medically necessary services recommended as a result of early and periodic screening, diagnosis, and treatment.

(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 system must include incentives and disincentives for network providers.

2. Each plan must collect and report the Health Plan Employer Data and Information Set (HEDIS) measures, as specified by the agency. 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 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 6. Subsection (2) of section 409.968, Florida Statutes, is amended to read:

409.968 Managed care plan payments.—

(2) Provider service networks must ~~may~~ be prepaid plans and receive per-member, per-month payments negotiated pursuant to the procurement process described in s. 409.966. ~~Provider service networks that choose not to be prepaid plans shall receive fee-for-service rates with a shared savings settlement. The fee-for-service option shall be available to a provider service network only for the first 2 years of its operation. The agency shall annually conduct cost reconciliations to determine the amount of cost savings achieved by fee-for-service provider service networks for the dates of service within the period being reconciled. Only payments for covered services for dates of service within the reconciliation period and paid within 6 months after the last date of service in the reconciliation period must be included. The agency shall perform the necessary adjustments for the inclusion of claims incurred but not reported within the reconciliation period for claims that could be received and paid by the agency after the 6-month claims processing time lag. The agency shall provide the results of the~~

~~reconciliations to the fee-for-service provider service networks within 45 days after the end of the reconciliation period. The fee-for-service provider service networks shall review and provide written comments or a letter of concurrence to the agency within 45 days after receipt of the reconciliation results. This reconciliation is considered final.~~

Section 7. Subsections (3) and (4) of section 409.973, Florida Statutes, are amended to read:

409.973 Benefits.—

(3) HEALTHY BEHAVIORS.—Each plan operating in the managed medical assistance program shall establish a program to encourage and reward healthy behaviors. At a minimum, each plan must establish a medically approved tobacco ~~smoking~~ cessation program, a medically directed weight loss program, and a medically approved alcohol recovery program or substance abuse recovery program that must include, but may not be limited to, opioid abuse recovery. Each plan must identify enrollees who smoke, are morbidly obese, or are diagnosed with alcohol or substance abuse in order to establish written agreements to secure the enrollees' commitment to participation in these programs.

(4) PRIMARY CARE INITIATIVE.—Each plan operating in the managed medical assistance program shall establish a program to encourage enrollees to establish a relationship with their primary care provider. Each plan shall:

(a) Provide information to each enrollee on the importance of and procedure for selecting a primary care provider, and thereafter automatically assign to a primary care provider any enrollee who fails to choose a primary care provider.

(b) If the enrollee was not a Medicaid recipient before enrollment in the plan, assist the enrollee in scheduling an appointment with the primary care provider. If possible the appointment should be made within 30 days after enrollment in the plan. ~~For enrollees who become eligible for Medicaid between January 1, 2014, and December 31, 2015, the appointment should be scheduled within 6 months after enrollment in the plan.~~

(c) Report to the agency the number of enrollees assigned to each primary care provider within the plan's network.

(d) Report to the agency the number of enrollees who have not had an appointment with their primary care provider within their first year of enrollment.

(e) Report to the agency the number of emergency room visits by enrollees who have not had at least one appointment with their primary care provider.

Section 8. Subsections (1) and (2) of section 409.974, Florida Statutes, are amended to read:

409.974 Eligible plans.—

(1) ELIGIBLE PLAN SELECTION.—The agency shall select eligible plans for the managed medical assistance program through the procurement process described in s. 409.966 through a single statewide procurement. The agency may award contracts to plans selected through the procurement process either on a regional or statewide basis. The awards must include at least one provider service network in each of the eight regions outlined in this subsection. The agency shall procure:

(a) At least 3 plans and up to 4 plans for Region A.

(b) At least 3 plans and up to 6 plans for Region B.

(c) At least 5 plans and up to 10 plans for Region C.

(d) At least 3 plans and up to 6 plans for Region D.

(e) At least 3 plans and up to 4 plans for Region E.

(f) At least 3 plans and up to 5 plans for Region F.

(g) At least 3 plans and up to 5 plans for Region G.

(h) At least 5 plans and up to 10 plans for Region H. ~~The agency shall notice invitations to negotiate no later than January 1, 2013.~~

~~(a) The agency shall procure two plans for Region 1. At least one plan shall be a provider service network if any provider service networks submit a responsive bid.~~

~~(b) The agency shall procure two plans for Region 2. At least one plan shall be a provider service network if any provider service networks submit a responsive bid.~~

~~(c) The agency shall procure at least three plans and up to five plans for Region 3. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(d) The agency shall procure at least three plans and up to five plans for Region 4. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(e) The agency shall procure at least two plans and up to four plans for Region 5. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(f) The agency shall procure at least four plans and up to seven plans for Region 6. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(g) The agency shall procure at least three plans and up to six plans for Region 7. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(h) The agency shall procure at least two plans and up to four plans for Region 8. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(i) The agency shall procure at least two plans and up to four plans for Region 9. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(j) The agency shall procure at least two plans and up to four plans for Region 10. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(k) The agency shall procure at least five plans and up to 10 plans for Region 11. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

If no provider service network submits a responsive bid, the agency shall procure no more than one less than the maximum number of eligible plans permitted in that region. Within 12 months after the initial invitation to negotiate, the agency shall attempt to procure a provider service network. The agency shall notice another invitation to negotiate only with provider service networks in those regions where no provider service network has been selected.

(2) QUALITY SELECTION CRITERIA.—In addition to the criteria established in s. 409.966, the agency shall consider evidence that an eligible plan has written agreements or signed contracts or has made substantial progress in establishing relationships with providers before the plan submitting a response. The agency shall evaluate and give special weight to evidence of signed contracts with essential providers as defined by the agency pursuant to s. 409.975(1). ~~The agency shall exercise a preference for plans with a provider network in which over 10 percent of the providers use electronic health records, as defined in s. 408.051.~~ When all other factors are equal, the agency shall consider whether the organization has a contract to provide managed long-term care services in the same region and shall exercise a preference for such plans.

Section 9. Paragraph (b) of subsection (1) of section 409.975, Florida Statutes, is amended to read:

409.975 Managed care plan accountability.—In addition to the requirements of s. 409.967, plans and providers participating in the managed medical assistance program shall comply with the requirements of this section.

(1) PROVIDER NETWORKS.—Managed care plans must develop and maintain provider networks that meet the medical needs of their enrollees in accordance with standards established pursuant to s. 409.967(2)(c). Except as provided in this section, managed care plans may limit the providers in their networks based on credentials, quality indicators, and price.

(b) Certain providers are statewide resources and essential providers for all managed care plans in all regions. All managed care plans must include these essential providers in their

networks. Statewide essential providers include:

1. Faculty plans of Florida medical schools.

2. Regional perinatal intensive care centers as defined in s. 383.16(2).

3. Hospitals licensed as specialty children's hospitals as defined in s. 395.002(28).

4. Accredited and integrated systems serving medically complex children which comprise separately licensed, but commonly owned, health care providers delivering at least the following services: medical group home, in-home and outpatient nursing care and therapies, pharmacy services, durable medical equipment, and Prescribed Pediatric Extended Care.

5. Florida cancer hospitals that meet the criteria in 42 U.S.C. s. 1395ww(d)(1)(B)(v).

Managed care plans that have not contracted with all statewide essential providers in all regions as of the first date of recipient enrollment must continue to negotiate in good faith. Payments to physicians on the faculty of nonparticipating Florida medical schools shall be made at the applicable Medicaid rate. Payments for services rendered by regional perinatal intensive care centers shall be made at the applicable Medicaid rate as of the first day of the contract between the agency and the plan. Except for payments for emergency services, payments to nonparticipating specialty children's hospitals shall equal the highest rate established by contract between that provider and any other Medicaid managed care plan.

Section 10. Subsections (1), (2), (4), and (5) of section 409.977, Florida Statutes, are amended to read:

409.977 Enrollment.—

(1) The agency shall automatically enroll into a managed care plan those Medicaid recipients who do not voluntarily choose a plan pursuant to s. 409.969. The agency shall automatically enroll recipients in plans that meet or exceed the performance or quality standards established pursuant to s. 409.967 and may not automatically enroll recipients in a plan that is deficient in those performance or quality standards. When a specialty plan is available to accommodate a specific condition or diagnosis of a recipient, the agency shall assign the recipient to that plan. ~~In the first year of the first contract term only, if a recipient was previously enrolled in a plan that is still available in the region, the agency shall automatically enroll the recipient in that plan unless an applicable specialty plan is available.~~ Except as otherwise provided in this part, the agency may not engage in practices that are designed to favor one managed care plan over another.

(2) When automatically enrolling recipients in managed care plans, if a recipient was enrolled in a plan immediately before the recipient's choice period and that plan is still available in the region, the agency must maintain the recipient's enrollment in that plan unless an applicable specialty plan is available. Otherwise, the agency shall automatically enroll based on the following criteria:

(a) Whether the plan has sufficient network capacity to meet the needs of the recipients.

(b) Whether the recipient has previously received services from one of the plan's primary care providers.

(c) Whether primary care providers in one plan are more

geographically accessible to the recipient's residence than those in other plans.

(4) The agency shall develop a process to enable a recipient with access to employer-sponsored health care coverage to opt out of all managed care plans and to use Medicaid financial assistance to pay for the recipient's share of the cost in such employer-sponsored coverage. ~~Contingent upon federal approval,~~ The agency shall also enable recipients with access to other insurance or related products providing access to health care services created pursuant to state law, including any product available under the Florida Health Choices Program, or any health exchange, to opt out. The amount of financial assistance provided for each recipient may not exceed the amount of the Medicaid premium that would have been paid to a managed care plan for that recipient. The agency shall ~~seek federal approval to~~ require Medicaid recipients with access to employer-sponsored health care coverage to enroll in that coverage and use Medicaid financial assistance to pay for the recipient's share of the cost for such coverage. The amount of financial assistance provided for each recipient may not exceed the amount of the Medicaid premium that would have been paid to a managed care plan for that recipient.

(5) Specialty plans serving children in the care and custody of the department may serve such children as long as they remain in care, including those remaining in extended foster care pursuant to s. 39.6251, or are in subsidized adoption and continue to be eligible for Medicaid pursuant to s. 409.903, or are receiving guardianship assistance payments and continue to be eligible for Medicaid pursuant to s. 409.903.



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Section 11. Subsection (2) of section 409.981, Florida Statutes, is amended to read:

409.981 Eligible long-term care plans.—

(2) ELIGIBLE PLAN SELECTION.—The agency shall select eligible plans for the long-term care managed care program through the procurement process described in s. 409.966 through a single statewide procurement. The agency may award contracts to plans selected through the procurement process on a regional or statewide basis. The awards must include at least one provider service network in each of the eight regions outlined in this subsection. The agency shall procure:

(a) At least 3 plans and up to 4 plans for Region A.

(b) At least 3 plans and up to 6 plans for Region B.

(c) At least 5 plans and up to 10 plans for Region C.

(d) At least 3 plans and up to 6 plans for Region D.

(e) At least 3 plans and up to 4 plans for Region E.

(f) At least 3 plans and up to 5 plans for Region F.

(g) At least 3 plans and up to 4 plans for Region G.

(h) At least 5 plans and up to 10 plans for Region H.

~~Two plans for Region 1. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(b) Two plans for Region 2. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(c) At least three plans and up to five plans for Region 3. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(d) At least three plans and up to five plans for Region 4.~~



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~~At least one plan must be a provider service network if any provider service network submits a responsive bid.~~

~~(e) At least two plans and up to four plans for Region 5. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(f) At least four plans and up to seven plans for Region 6. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(g) At least three plans and up to six plans for Region 7. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(h) At least two plans and up to four plans for Region 8. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(i) At least two plans and up to four plans for Region 9. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(j) At least two plans and up to four plans for Region 10. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(k) At least five plans and up to 10 plans for Region 11. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

If no provider service network submits a responsive bid ~~in a region other than Region 1 or Region 2~~, the agency shall procure no more than one less than the maximum number of eligible plans permitted in that region. Within 12 months after the initial invitation to negotiate, the agency shall attempt to procure a


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provider service network. The agency shall notice another invitation to negotiate only with provider service networks in regions where no provider service network has been selected.

Section 12. Subsection (4) of section 409.8132, Florida Statutes, is amended to read:

409.8132 Medikids program component.—

(4) APPLICABILITY OF LAWS RELATING TO MEDICAID.—The provisions of ss. 409.902, 409.905, 409.906, 409.907, 409.908, 409.912, 409.9121, 409.9122, 409.9123, ~~409.9124,~~ 409.9127, 409.9128, 409.913, 409.916, 409.919, 409.920, and 409.9205 apply to the administration of the Medikids program component of the Florida Kidcare program, except that s. 409.9122 applies to Medikids as modified by the provisions of subsection (7).

Section 13. For the purpose of incorporating the amendment made by this act to section 409.912, Florida Statutes, in references thereto, subsections (1), (7), (13), and (14) of section 409.962, Florida Statutes, are reenacted to read:

409.962 Definitions.—As used in this part, except as otherwise specifically provided, the term:

(1) "Accountable care organization" means an entity qualified as an accountable care organization in accordance with federal regulations, and which meets the requirements of a provider service network as described in s. 409.912(1).

(7) "Eligible plan" means a health insurer authorized under chapter 624, an exclusive provider organization authorized under chapter 627, a health maintenance organization authorized under chapter 641, or a provider service network authorized under s. 409.912(1) or an accountable care organization authorized under federal law. For purposes of the managed medical assistance


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program, the term also includes the Children's Medical Services Network authorized under chapter 391 and entities qualified under 42 C.F.R. part 422 as Medicare Advantage Preferred Provider Organizations, Medicare Advantage Provider-sponsored Organizations, Medicare Advantage Health Maintenance Organizations, Medicare Advantage Coordinated Care Plans, and Medicare Advantage Special Needs Plans, and the Program of All-inclusive Care for the Elderly.

(13) "Prepaid plan" means a managed care plan that is licensed or certified as a risk-bearing entity, or qualified pursuant to s. 409.912(1), in the state and is paid a prospective per-member, per-month payment by the agency.

(14) "Provider service network" means an entity qualified pursuant to s. 409.912(1) of which a controlling interest is owned by a health care provider, or group of affiliated providers, or a public agency or entity that delivers health services. Health care providers include Florida-licensed health care professionals or licensed health care facilities, federally qualified health care centers, and home health care agencies.

Section 14. For the purpose of incorporating the amendment made by this act to section 409.912, Florida Statutes, in a reference thereto, subsection (22) of section 641.19, Florida Statutes, is reenacted to read:

641.19 Definitions.—As used in this part, the term:

(22) "Provider service network" means a network authorized under s. 409.912(1), reimbursed on a prepaid basis, operated by a health care provider or group of affiliated health care providers, and which directly provides health care services under a Medicare, Medicaid, or Healthy Kids contract.


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Section 15. For the purpose of incorporating the amendments made by this act to section 409.981, Florida Statutes, in references thereto, paragraphs (h), (i), and (j) of subsection (3) and subsection (11) of section 430.2053, Florida Statutes, are reenacted to read:

430.2053 Aging resource centers.—

(3) The duties of an aging resource center are to:

(h) Assist clients who request long-term care services in being evaluated for eligibility for enrollment in the Medicaid long-term care managed care program as eligible plans become available in each of the regions pursuant to s. 409.981(2).

(i) Provide enrollment and coverage information to Medicaid managed long-term care enrollees as qualified plans become available in each of the regions pursuant to s. 409.981(2).

(j) Assist Medicaid recipients enrolled in the Medicaid long-term care managed care program with informally resolving grievances with a managed care network and assist Medicaid recipients in accessing the managed care network's formal grievance process as eligible plans become available in each of the regions defined in s. 409.981(2).

(11) In an area in which the department has designated an area agency on aging as an aging resource center, the department and the agency shall not make payments for the services listed in subsection (9) and the Long-Term Care Community Diversion Project for such persons who were not screened and enrolled through the aging resource center. The department shall cease making payments for recipients in eligible plans as eligible plans become available in each of the regions defined in s. 409.981(2).


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Section 16. This act shall take effect July 1, 2022.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1950
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Brodeur
SUBJECT:	Statewide Medicaid Managed Care Program
DATE:	March 2, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Brown	HP	**Fav/CS**
2.	McKnight	Money	AHS	**Recommend: Fav/CS**
3.	McKnight	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1950 makes changes to the Statewide Medicaid Managed Care (SMMC) program in anticipation of the next competitive procurement for the 2025 plan year. The bill:

- Requires provider service networks (PSNs) to be reimbursed on a prepaid basis.
- Authorizes the Agency for Health Care Administration (AHCA) to select eligible managed care plans to provide services through a single statewide procurement and deletes the requirement that the AHCA conduct separate and simultaneous procurements for each Medicaid region.
- Authorizes the AHCA to award contracts to managed care plans on a regional or statewide basis.
- Outlines a new regional structure for plan selection under the SMMC program's Managed Medical Assistance (MMA) and Long-Term Care (LTC) programs with a minimum and maximum number of plans designated for each region. The bill provides for nine regions named by letters (Regions A-I), rather than the 11 regions named by numbers (Regions 1-11) in current law.
- Requires the AHCA to award a contract to at least one PSN in each of the nine regions under the MMA program and under the LTC program.
- Requires managed care plans to contract with Florida cancer hospitals that meet specified federal criteria in their networks as essential providers, and provides a payment rate for services provided without a contract.

- Revises MMA plan healthy behaviors program requirements to include tobacco cessation programs, rather than smoking cessation programs, and to clarify that substance abuse programs must include opioid abuse recovery.
- Authorizes an MMA Child Welfare Specialty Plan to serve a child in a permanent guardianship situation whose parents receive payments through the Guardianship Assistance Program.
- Deletes obsolete language.

The bill has a significant negative fiscal impact to the Florida Medicaid program. *See* Section V of this analysis.

The bill takes effect on July 1, 2022.

II. Present Situation:

Florida Medicaid Program

The Medicaid program is a joint federal-state program that finances health coverage for individuals, including eligible low-income adults, children, pregnant women, elderly adults, and persons with disabilities.[1] The Centers for Medicare & Medicaid Services (CMS) within the U.S. Department of Health and Human Services (HHS) is responsible for administering the federal Medicaid program. Florida Medicaid is the health care safety net for low-income Floridians. Florida's program is administered by the Agency for Health Care Administration (AHCA) and financed through state and federal funds.[2]

A Medicaid state plan is an agreement between a state and the federal government describing how the state administers its Medicaid programs. The state plan establishes groups of individuals covered under the Medicaid program, services that are provided, payment methodologies, and other administrative and organizational requirements.

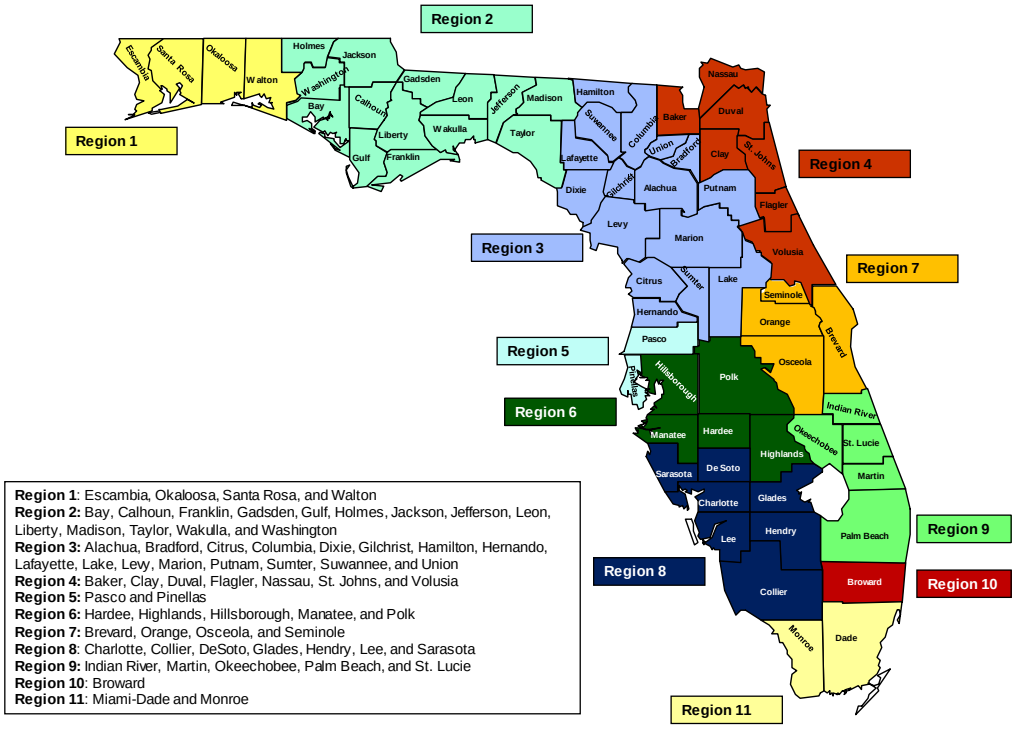
In order to participate in Medicaid, federal law requires states to cover certain population groups (mandatory eligibility groups) and gives states the flexibility to cover other population groups (optional eligibility groups). States set individual eligibility criteria within federal minimum standards. The AHCA may seek an amendment to the state plan as necessary to comply with federal or state laws or to implement program changes. States send state plan amendments to the federal CMS for review and approval.[3]

Medicaid enrollees generally receive benefits through one of two service-delivery systems: fee-for-service or managed care. Under fee-for-service, health care providers are paid by the state Medicaid program for each service provided to a Medicaid enrollee. Under managed care, the state contracts with private managed care plans for the coordination and payment of services for Medicaid enrollees. The state pays the managed care plans a capitation payment, or fixed monthly payment, per recipient enrolled in the managed care plan.

[1] Medicaid.gov, *Medicaid, available at* https://www.medicaid.gov/medicaid/index.html (last visited Jan. 23, 2022).
[2] Section 20.42, F.S.
[3] Medicaid.gov, *Medicaid State Plan Amendments, available at* https://www.medicaid.gov/medicaid/medicaid-state-plan-amendments/index.html (last visited Jan. 23, 2022).

Statewide Medicaid Managed Care (SMMC) Program

In 2011, the Legislature established the Medicaid program as a statewide, integrated managed care program for all covered services, and directed the AHCA to create the Statewide Medicaid Managed Care (SMMC) program and contract with managed care plans on a regional basis to provide services to eligible recipients.[4] The SMMC minimum benefits are authorized by federal authority and are specifically required in s. 409.973, F.S., for Managed Medical Assistance (MMA) plans and s. 409.98, F.S., for Long-Term Care (LTC) plans.



Today, the majority of Florida Medicaid recipients receive their services through a managed care plan contracted with the AHCA under the SMMC program. The SMMC program has three components:

- MMA: provides Medicaid covered medical services like doctor visits, hospital care, prescribed drugs, mental health care, and transportation to these services.[5]
- LTC: provides Medicaid LTC services like care in a nursing facility, assisted living, or at home. To get LTC you must be at least 18 years old and meet nursing home level of care (or meet hospital level of care if you have Cystic Fibrosis).[6]
- Dental: provides all Medicaid dental services for children and adults. All individuals on Medicaid must enroll in a dental plan.[7]

[4] Chapter 2011-134, Laws of Fla.
[5] Agency for Health Care Administration, *Statewide Medicaid Managed Care, Health Plans and Programs, available at* https://www.flmedicaidmanagedcare.com/health/comparehealthplans (last visited Feb. 9, 2022).
[6] *Id.*
[7] *Id.*

Eligible Plan Selection

The SMMC program was fully implemented in August 2014. During the initial SMMC procurement, the AHCA awarded contracts to 18 plans, including seven provider service networks (PSNs). By the end of the first contract period, due to various mergers, acquisitions, and conversions to HMO status, only one PSN remained.[8]

During the second procurement, beginning December 2018 and ending in December 2023, the AHCA awarded contracts to 16 plans, including five PSNs, but only three of the PSNs currently remain in the program due to mergers and acquisitions with a total of 10 health plans.[9] In 2020, the Legislature extended the allowable term of the SMMC contracts from five to six years.[10] As a result, the AHCA's current contracts will end in December 2024. The AHCA will conduct its next procurement in Fiscal Year 2022-2023 for implementation in the 2025 plan year.

Various mergers and acquisitions have occurred during the lifecycle of each SMMC contract, resulting in a situation where a majority of enrollees are receiving services from statewide plans that operate in all 11 regions. As of October 1, 2021, 40 percent of the SMMC population, including those enrolled in a specialty plan, were enrolled in a plan operating statewide and 79 percent were enrolled in a plan that operates in at least eight of the 11 regions. The chart below reflects the current operational SMMC plans in their designated regions as of October 1, 2021:[11]

[8] Agency for Health Care Administration, 2022 Agency Legislative Bill Analysis for SB 1950, Jan. 19, 2022 (on file with the Senate Committee on Health Policy).
[9] *Id.*
[10] Chapter 2020-156, s. 44, Laws of Fla.
[11] Agency for Health Care Administration, *Statewide Medicaid Managed Care, available at* https://ahca.myflorida.com/medicaid/statewide_mc/pdf/mma/SMMC_Plans_by_Region.pdf (last visited Feb. 9, 2022).

SMMC Health Plans by Region (2018-2024)											
	1	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**
MMA Health Plans											
AmeriHealth									✓		✓
Community Care Plan										✓	
Simply Healthcare	✓	✓							✓		
Vivida Health								✓			
Comprehensive Plans (MMA & LTC Combined)											
Aetna Better Health						✓	✓				✓
Humana Medical Plan	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Molina Healthcare								✓			✓
Simply Healthcare					✓	✓	✓			✓	✓
Sunshine Health	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
United Healthcare			✓	✓		✓					✓
Specialty Plans											
CMS Plan	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Clear Health Alliance	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Molina SMI Specialty				✓	✓		✓				
Sunshine SMI Specialty	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sunshine Child Welfare	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

Provider Service Networks (PSNs)

A PSN in the Medicaid program is a managed care plan established or organized and operated by a health care provider, or group of affiliated health care providers, which provides a substantial proportion of the health care items and services under a contract directly through the provider or affiliated group of providers and may make arrangements with physicians or other health care professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians, by other health professionals, or through the institutions.[12] The health care providers must have a controlling interest in the governing body of the PSN. The AHCA is authorized to contract with PSNs under s. 409.912(1), F.S., and may currently reimburse PSNs on a fee-for-service basis with a shared savings settlement or on a prepaid basis with per-member, per-month payments. A PSN may be reimbursed on a fee-for-service basis for only the first two years of the plan's operation.[13]

Specialty Plans[14]

An MMA managed care plan can participate in the MMA program as a standard plan or as a specialty plan. A specialty plan is a managed care plan that serves Medicaid recipients who meet specified criteria based on age, medical condition, or diagnosis.[15] Under federal Medicaid law and the SMMC waiver, each recipient has a choice of plans and may select any available plan

[12] Section 409.912(1)(b), F.S.
[13] *Id.*
[14] Agency for Health Care Administration, *Medicaid Managed Medical Assistance Specialty Plans available at* https://ahca.myflorida.com/medicaid/statewide_mc/pdf/mma/Specialty_Plans_110316.pdf (last visited Jan. 23, 2022).
[15] Section 409.962(18), F.S.

unless that plan is restricted by contract to a specific population that does not include the recipient.[16] If a specialty plan is available to accommodate a specific condition or diagnosis of a Medicaid recipient, the AHCA must automatically enroll the recipient in that plan unless the recipient chooses a different plan.[17] MMA specialty plans cover the same health care services as the standard MMA plans, and in addition, they must maintain a care coordination program tailored to the special needs of the plan's enrollees.

When a recipient is eligible for more than one MMA specialty plan, the AHCA uses a ranking to determine which MMA specialty plan to assign. Unless the recipient chooses to enroll in another MMA specialty plan for which he or she is eligible, or in a standard MMA plan offered in his or her region, the recipient is automatically assigned to the specialty plan listed highest on the ranking. The AHCA has awarded specialty plan contracts to serve enrollees with specialty conditions including severe mental illness, HIV/AIDS, as well as children with special health care needs, and those involved with Florida's child welfare system.

III. Effect of Proposed Changes:

Section 1 amends s. 409.912(1), F.S., to eliminate fee-for-service (FFS) reimbursement of provider service networks (PSNs) in conjunction with changes made to s. 409.968(2), F.S., in section 6 of the bill. Under these changes, PSNs must be reimbursed on a prepaid basis, receiving a per-member, per-month payment. This section of the bill prohibits the Agency for Health Care Administration (AHCA) from contracting with a PSN outside of the procurement process in s. 409.966, F.S., as amended by section 4 of the bill.

Changes to this subsection relocate, but do not substantively change, language exempting PSNs from parts I and III of ch. 643, F.S.

Section 2 repeals obsolete language in s. 409.9124, F.S., relating to managed care plan reimbursement.

Section 3 amends s. 409.964, F.S., to eliminate an obsolete requirement that the AHCA provide public notice and the opportunity for public comment before seeking a waiver to implement the Statewide Medicaid Managed Care (SMMC) program. This language is obsolete as the public notice and public meeting requirements were met prior to the AHCA seeking federal authority to implement the SMMC program in 2011 and 2012.

Section 4 amends s. 409.966(2), F.S., to require the AHCA's databook consisting of Medicaid utilization and spending data (which must be published 90 days before issuing an invitation to negotiate) to include at least the 24 most recent months of data from the Medicaid Encounter Data System. This removes the requirement that the databook consist of data for the three most recent contract years.

This section of the bill deletes the requirement for the AHCA to conduct separate and simultaneous procurements for each Medicaid region and outlines a new structure for regional

[16] Section 409.969(1), F.S.
[17] Section 409.977(1), F.S.

awards. The new structure includes nine regions named by letters (Regions A-I), rather than the 11 regions named by numbers (Regions 1-11) included in the original statute.

The following chart outlines the nine regions proposed in the bill:[18]

Current	Counties	Proposed
Region 1	Escambia, Okaloosa, Santa Rosa, and Walton	**Region A**
Region 2	Bay, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Taylor, Wakulla, and Washington	
Region 3	Alachua, Bradford, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Lafayette, Lake, Levy, Marion, Putnam, Sumter, Suwannee, and Union	**Region B**
Region 4	Baker, Clay, Duval, Flagler, Nassau, St. Johns, and Volusia	
Region 5	Pasco and Pinellas	**Region C**
Region 6	Hardee, Highlands, Hillsborough, Manatee, and Polk	**Region D**
Current	**Counties**	**Proposed**
Region 7	Brevard, Orange, Osceola, and Seminole	**Region E**
Region 8	Charlotte, Collier, DeSoto, Glades, Hendry, Lee, and Sarasota	**Region F**
Region 9	Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie	**Region G**
Region 10	Broward	**Region H**
Region 11	Miami-Dade and Monroe	**Region I**

This section of the bill also deletes obsolete language in s. 409.966(3)(d), F.S., that required the AHCA to negotiate capitation rates for the first year of the first contract term and in s. 409.966(3)(e), F.S., that awarded additional contracts to plans who are awarded contracts in Regions 1 and 2. The AHCA indicates that due to the merger of Regions 1 and 2 into a single Region A, and because the bill provides for the award of statewide contracts, this provision is no longer needed.[19]

Section 5 amends s. 409.967, F.S., to delete obsolete language relating to plans contracting with hospital facilities that became licensed and operational before January 1, 2013. This section of the bill also deletes obsolete language requiring the AHCA to issue a request for information to determine whether cost savings could be achieved through oversight and management by the end of the fourth year of the first contract term.

Section 6 amends s. 409.968(2), F.S., to delete language allowing PSNs to receive fee-for-service rates with a shared savings settlement. In conjunction with changes made to s. 409.912. F.S., in section 1 of this bill, the bill requires all PSNs to be prepaid plans, receiving a per-member, per-month payment, and be negotiated pursuant to the procurement process in s. 409.966, F.S.

[18] Agency for Health Care Administration, 2022 Agency Legislative Bill Analysis for SB 1950, Jan. 19, 2022 (on file with the Senate Committee on Health Policy).
[19] Agency for Health Care Administration, 2022 Agency Legislative Bill Analysis for SB 1950, Jan. 19, 2022 (on file with the Senate Committee on Health Policy).

Section 7 amends s. 409.973, F.S., to revise language related to Healthy Behaviors programs which Managed Medical Assistance (MMA) plans are required to establish to encourage and reward healthy behaviors. The bill requires each plan to establish a "tobacco cessation program" rather than a "smoking cessation program" to ensure that each program also includes smokeless tobacco products. It also requires an MMA plan's substance abuse recovery program to include opioid abuse recovery.

This section of the bill also deletes obsolete language in 409.97(4)(b), F.S., relating to the Primary Care Initiative, which requires the plans to schedule an appointment with a primary care provider for enrollees who became eligible for Medicaid between January 1, 2014 and December 31, 2015, within 6 months of enrollment in the plan.

Section 8 amends s. 409.974(1), F.S., to outline the structure for plan selection under the MMA program. This section authorizes the AHCA to select eligible plans to provide services through a single statewide procurement and to award contracts to plans on a regional or statewide basis. It requires the AHCA to award a contract to at least one PSN in each of the 9 regions and to procure:

- 3-4 plans for Region A
- 3-6 plans for Region B
- 3-5 plans for Region C
- 4-7 plans for Region D
- 3-6 plans for Region E
- 3-4 plans for Region F
- 3-5 plans for Region G
- 3-5 plans for Region H
- 5-10 plans for Region I

This section of the bill also amends s. 409.974(2), F.S., to eliminate the requirement that the AHCA exercise a preference for plans with a provider network in which over 10 percent of the providers use electronic health records. It is estimated that 80 percent of providers currently use electronic health records.[20]

Section 9 amends s. 409.975(1)(b), F.S., to expand the list of statewide essential providers to include Florida cancer hospitals that meet the criteria in 42 U.S.C. s. 1395ww(d)(1)(B)(v). Currently, Moffitt Cancer Center in Tampa and Sylvester Comprehensive Cancer Center in Miami meet this criteria. Under the bill, managed care plans would be required to include these cancer hospitals in their networks as essential providers.

Current law provides for how a children's hospital that is not in-network with a managed care plan must be compensated when providing services to a member of that health plan. This section of the bill also adds Florida's nationally-certified cancer hospitals, requiring non-participating cancer center reimbursement rates to be the highest rate the center negotiated with any Medicaid plan.

[20] Email from Legislative Affairs Director, Agency for Health Care Administration, to Senate Committee on Health Policy Staff (Jan. 24, 2022) (on file with the Senate Committee on Health Policy).

Section 10 amends s. 409.977, F.S., to revise and relocate the requirement for the AHCA to maintain a recipient's enrollment in a plan if a recipient was enrolled in a plan immediately before the recipient's choice period and that plan is still available in the region, unless an applicable specialty plan is available from subsection (1) to subsection (2).

This section of the bill deletes the obsolete requirement in s. 409.977(4), F.S., for the AHCA to seek federal approval to develop and implement a process to enable a Medicaid recipient with access to employer-sponsored health care coverage to opt out of all managed care plans and to use Medicaid financial assistance to pay for the recipient's share of the cost in such employer-sponsored coverage. The AHCA has already obtained federal approval for what has come to be known as their Health Insurance Premium Payment (HIPP) program[21] and continues to implement this program.[22] As of August 2021, 53 recipients were participating in the HIPP program.[23]

This section of the bill also amends s. 409.977(5), F.S., to authorize a child welfare specialty managed care plan under contract with the MMA program to serve a child in a permanent guardianship situation.[24] Specifically, such a child must continue to be eligible for Medicaid and must receive guardianship assistance payments under the Guardianship Assistance Program. Currently, only children in foster care, extended foster care, or subsidized adoption are eligible for the child welfare specialty plan.

Section 11 amends s. 409.981, F.S., to outline the structure for plan selection under the Long-Term Care program. Tracking the structure for MMA plan selection above in section 8 of this bill, except as noted, this section authorizes the AHCA to select eligible plans to provide services through a single statewide procurement and to award contracts to plans on a regional or statewide basis. It requires the AHCA to award a contract to at least one PSN in each of the nine regions and to procure:

- 3-4 plans for Region A
- 3-6 plans for Region B
- 3-5 plans for Region C
- 4-7 plans for Region D
- 3-6 plans for Region E
- 3-4 plans for Region F
- 3-5 plans for Region G
- 3-4 plans for Region H[25]

[21] *See* Rule 59G-7.007, F.A.C.
[22] The Agency for Health Care Administration reports that for the 2020 calendar year, $95,388.79 was spent on premium reimbursements through the HIPP program. From January to August of 2021, $912,363.87 was spent on premium reimbursements through the program. Agency for Health Care Administration, 2022 Agency Legislative Bill Analysis for SB 1950, Jan. 19, 2022 (on file with the Senate Committee on Health Policy).
[23] Email from Legislative Affairs Director, Agency for Health Care Administration, to Senate Committee on Health Policy Staff (Jan. 24, 2022) (on file with the Senate Committee on Health Policy).
[24] For more information on the Sunshine Health Child Welfare Specialty Plan and the Guardianship Assistance Program, *see* Florida Senate Bill Analysis and Fiscal Impact Statement for CS/SB 1080, Jan. 19, 2022 *available* at https://www.flsenate.gov/Session/Bill/2022/1080/Analyses/2022s01080.hp.PDF (last visited Jan. 23, 2022). The provisions of CS/SB 1080 are identical to the changes made to s. 409.977(5), F.S., in this bill.
[25] Note that the Agency for Health Care Administration must award 3-5 MMA plans for Region H under bill section 8.

- 5-10 plans for Region I

Section 12 amends s. 409.8132, F.S., to conform a cross-reference to changes made in bill section 2 which repeals s. 409.9124, F.S.

Section 13 reenacts s. 409.962, F.S., to incorporate changes made by this act to s. 409.912, F.S., in bill section 1.

Section 14 reenacts s. 641.19, F.S., to incorporate changes made by this act to s. 409.912, F.S., in bill section 1.

Section 15 reenacts s. 430.2053, F.S., to incorporate changes made by this act to s. 409.981, F.S., in bill section 11.

Section 16 requires the AHCA to amend existing Statewide Medicaid Managed Care (SMMC) contracts to implement several provisions of the bill to ss. 409.973, 409.975, and 409.977, F.S., and directs the AHCA to implement the procurement-related provisions for the 2025 plan year to ss. 409.966, 409.974, and 409.981, F.S. The AHCA must amend existing SMMC contracts to implement provisions of the bill related to the Healthy Behaviors programs, expansion of essential providers to include Florida's nationally-certified cancer hospitals, plan enrollment, and eligibility for the child welfare specialty plan for children in the Guardianship Assistance Program.

Section 17 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:

None.

C. Government Sector Impact:

The capitation rate for children in the Child Welfare Specialty Plan is higher than the rates for most children in other plans. If children become eligible and receive services through the Child Welfare Specialty Plan as authorized in the bill, the bill will have a significant negative fiscal impact to the Florida Medicaid program. The Agency for Health Care Administration estimates a maximum recurring fiscal impact of $12.2 million ($4.7 million General Revenue) based on a rate year 2020-2021 estimate of 4,120 children who currently would be eligible for the change in plans.[26]

The precise fiscal impact of children becoming newly eligible for the Child Welfare Specialty Plans cannot be calculated without knowing the Medicaid region in which an eligible child resides and the capitation rate category in which the child is currently categorized. This is because Medicaid capitation rates vary by region and children could be in different rate cells based on age, gender, Medicaid eligibility category, and other characteristics.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.912, 409.964, 409.966, 409.967, 409.968, 409.973, 409.974, 409.975, 409.977, 409.981, and 409.8132.

This bill repeals section 409.9124 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 409.962, 641.19, and 430.2053.

[26] Agency for Health Care Administration, 2022 Agency Legislative Bill Analysis for SB 1950, Jan. 19, 2022 (on file with the Senate Committee on Health Policy).

IX. Additional Information:

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

CS/CS by Appropriations on February 28, 2022:
The committee substitute:

- Removes the achieved savings rebate provisions from the bill and maintains current law.
- Reinstates the requirement that the databook published by the Agency for Health Care Administration (AHCA) consisting of Medicaid utilization and spending data, delineate utilization by age, gender, eligibility group, geographic area, and aggregate clinical risk score.
- Expands the eight proposed regions into nine.
- Adjusts the minimum and maximum number of plans with which the AHCA will contract to provide services to the managed medical assistance (MMA) program and long-term care (LTC) program enrollees.
- Changes the non-participating cancer center reimbursement rate to the highest rate the center negotiated with any Medicaid plan.
- Requires the AHCA to amend existing Statewide Medicaid Managed Care (SMMC) contracts to implement several provisions of the bill and directs the AHCA to implement the procurement-related provisions for the 2025 plan year.

CS by Health Policy on January 26, 2022:
The CS corrects a drafting error in the underlying bill that would have inadvertently deleted the AHCA's existing authority to implement the HIPP program. The amendment keeps the HIPP program intact and removes obsolete language from statute regarding already-obtained federal approval to implement the program.

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 Health Policy; and Senator Brodeur

588-02344-22 20221950c1

A bill to be entitled

An act relating to the statewide Medicaid managed care program; amending s. 409.912, F.S.; requiring, rather than authorizing, that the reimbursement method for provider service networks be on a prepaid basis; deleting the authority to reimburse provider service networks on a fee-for-service basis; conforming provisions to changes made by the act; providing that provider service networks are subject to and exempt from certain requirements; providing construction; repealing s. 409.9124, F.S., relating to managed care reimbursement; amending s. 409.964, F.S.; deleting a requirement that the Agency for Health Care Administration provide the opportunity for public feedback on a certain waiver application; amending s. 409.966, F.S.; revising requirements relating to the databook published by the agency consisting of Medicaid utilization and spending data; reallocating regions within the statewide managed care program; deleting a requirement that the agency negotiate plan rates or payments to guarantee a certain savings amount; deleting a requirement for the agency to award additional contracts to plans in specified regions for certain purposes; revising a limitation on when plans may begin serving Medicaid recipients to apply to any eligible plan that participates in an invitation to negotiate, rather than plans participating in certain regions; making technical changes; amending s. 409.967, F.S.; deleting obsolete provisions; revising

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provisions relating to agency-defined quality measures under the achieved savings rebate program for Medicaid prepaid plans; amending s. 409.968, F.S.; conforming provisions to changes made by the act; amending s. 409.973, F.S.; revising requirements for healthy behaviors programs established by plans; deleting an obsolete provision; amending s. 409.974, F.S.; requiring the agency to select plans for the managed medical assistance program through a single statewide procurement; authorizing the agency to award contracts to plans on a regional or statewide basis; specifying requirements for minimum numbers of plans which the agency must procure for each specified region; conforming provisions to changes made by the act; deleting a requirement for the agency to exercise a preference for certain plans; amending s. 409.975, F.S.; providing that cancer hospitals meeting certain criteria are statewide essential providers; amending s. 409.977, F.S.; revising the circumstances for maintaining a recipient's enrollment in a plan; deleting obsolete language; authorizing specialty plans to serve certain children who receive guardianship assistance payments under the Guardianship Assistance Program; amending s. 409.981, F.S.; requiring the agency to select plans for the long-term care managed medical assistance program through a single statewide procurement; authorizing the agency to award contracts to plans on a regional or statewide basis; specifying requirements for

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minimum numbers of plans which the agency must procure for each specified region; conforming provisions to changes made by the act; amending s. 409.8132, F.S.; conforming a cross-reference; reenacting ss. 409.962(1), (7), (13), and (14) and 641.19(22) relating to definitions, to incorporate the amendments made by this act to s. 409.912, F.S., in references thereto; reenacting s. 430.2053(3)(h), (i), and (j) and (11), relating to aging resource centers, to incorporate the amendments made by this act to s. 409.981, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (1) of section 409.912, Florida Statutes, is amended to read:

409.912 Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. To ensure that medical services are effectively utilized, the agency may, in any case, require a confirmation or second physician's opinion of the correct diagnosis for purposes of authorizing future services under the Medicaid program. This section does not restrict access to emergency services or poststabilization care services as defined in 42 C.F.R. s. 438.114. Such confirmation or second opinion shall be rendered in a manner approved by the agency. The agency shall maximize the use of prepaid per capita and prepaid

aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies, including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed continuum of care. The agency shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services. The agency shall contract with a vendor to monitor and evaluate the clinical practice patterns of providers in order to identify trends that are outside the normal practice patterns of a provider's professional peers or the national guidelines of a provider's professional association. The vendor must be able to provide information and counseling to a provider whose practice patterns are outside the norms, in consultation with the agency, to improve patient care and reduce inappropriate utilization. The agency may mandate prior authorization, drug therapy management, or disease management participation for certain populations of Medicaid beneficiaries, certain drug classes, or particular drugs to prevent fraud, abuse, overuse, and possible dangerous drug interactions. The Pharmaceutical and Therapeutics Committee shall make recommendations to the agency on drugs for which prior authorization is required. The agency shall inform the Pharmaceutical and Therapeutics Committee of its decisions regarding drugs subject to prior authorization. The agency is authorized to limit the entities it contracts with or enrolls as Medicaid providers by developing a provider network through provider credentialing. The agency may competitively bid single-source-provider contracts if procurement of goods or services

results in demonstrated cost savings to the state without limiting access to care. The agency may limit its network based on the assessment of beneficiary access to care, provider availability, provider quality standards, time and distance standards for access to care, the cultural competence of the provider network, demographic characteristics of Medicaid beneficiaries, practice and provider-to-beneficiary standards, appointment wait times, beneficiary use of services, provider turnover, provider profiling, provider licensure history, previous program integrity investigations and findings, peer review, provider Medicaid policy and billing compliance records, clinical and medical record audits, and other factors. Providers are not entitled to enrollment in the Medicaid provider network. The agency shall determine instances in which allowing Medicaid beneficiaries to purchase durable medical equipment and other goods is less expensive to the Medicaid program than long-term rental of the equipment or goods. The agency may establish rules to facilitate purchases in lieu of long-term rentals in order to protect against fraud and abuse in the Medicaid program as defined in s. 409.913. The agency may seek federal waivers necessary to administer these policies.

(1) The agency may contract with a provider service network, which must ~~may~~ be reimbursed on a ~~fee-for-service or~~ prepaid basis. ~~Prepaid~~ Provider service networks shall receive per-member, per-month payments. ~~A provider service network that does not choose to be a prepaid plan shall receive fee-for-service rates with a shared savings settlement. The fee-for-service option shall be available to a provider service network only for the first 2 years of the plan's operation or until the~~

~~contract year beginning September 1, 2014, whichever is later. The agency shall annually conduct cost reconciliations to determine the amount of cost savings achieved by fee-for-service provider service networks for the dates of service in the period being reconciled. Only payments for covered services for dates of service within the reconciliation period and paid within 6 months after the last date of service in the reconciliation period shall be included. The agency shall perform the necessary adjustments for the inclusion of claims incurred but not reported within the reconciliation for claims that could be received and paid by the agency after the 6-month claims processing time lag. The agency shall provide the results of the reconciliations to the fee-for-service provider service networks within 45 days after the end of the reconciliation period. The fee-for-service provider service networks shall review and provide written comments or a letter of concurrence to the agency within 45 days after receipt of the reconciliation results. This reconciliation shall be considered final.~~

~~(a) A provider service network which is reimbursed by the agency on a prepaid basis shall be exempt from parts I and III of chapter 641 but must comply with the solvency requirements in s. 641.2261(2) and meet appropriate financial reserve, quality assurance, and patient rights requirements as established by the agency.~~

~~(b)~~ A provider service network is a network established or organized and operated by a health care provider, or group of affiliated health care providers, which provides a substantial proportion of the health care items and services under a contract directly through the provider or affiliated group of

providers and may make arrangements with physicians or other health care professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians, by other health professionals, or through the institutions. The health care providers must have a controlling interest in the governing body of the provider service network organization.

(a) A provider service network is exempt from parts I and III of chapter 641 but must comply with the solvency requirements in s. 641.2261(2) and meet appropriate financial reserve, quality assurance, and patient rights requirements as established by the agency.

(b) This subsection does not authorize the agency to contract with a provider service network outside of the procurement process described in s. 409.966.

Section 2. Section 409.9124, Florida Statutes, is repealed.

Section 3. Section 409.964, Florida Statutes, is amended to read:

409.964 Managed care program; state plan; waivers.—The Medicaid program is established as a statewide, integrated managed care program for all covered services, including long-term care services. The agency shall apply for and implement state plan amendments or waivers of applicable federal laws and regulations necessary to implement the program. ~~Before seeking a waiver, the agency shall provide public notice and the opportunity for public comment and include public feedback in the waiver application. The agency shall hold one public meeting in each of the regions described in s. 409.966(2), and the time~~

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~~period for public comment for each region shall end no sooner than 30 days after the completion of the public meeting in that region.~~

Section 4. Subsections (2), (3), and (4) of section 409.966, Florida Statutes, are amended to read:

409.966 Eligible plans; selection.—

(2) ELIGIBLE PLAN SELECTION.—The agency shall select a limited number of eligible plans to participate in the Medicaid program using invitations to negotiate in accordance with s. 287.057(1)(c). At least 90 days before issuing an invitation to negotiate, the agency shall compile and publish a databook consisting of a comprehensive set of utilization and spending data consistent with actuarial rate-setting practices and standards ~~for the 3 most recent contract years consistent with the rate-setting periods for all Medicaid recipients by region or county~~. The source of the data in the databook ~~report~~ must include, at a minimum, the 24 most recent months of ~~both historic fee-for-service claims and~~ validated data from the Medicaid Encounter Data System. The statewide managed care program includes ~~report must be available in electronic form and delineate utilization use by age, gender, eligibility group, geographic area, and aggregate clinical risk score. Separate and simultaneous procurements shall be conducted in each of~~ the following regions:

(a) Region A ~~1~~, which consists of Bay, Calhoun, Escambia, ~~Okaloosa, Santa Rosa, and Walton Counties.~~

~~(b) Region 2, which consists of Bay, Calhoun,~~ Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, and

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Washington Counties.

(b) ~~(c)~~ Region B ~~3~~, which consists of Alachua, Baker, Bradford, Citrus, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Hernando, Lafayette, Lake, Levy, Marion, Nassau, Putnam, St. Johns, Sumter, Suwannee, ~~and~~ Union ~~Counties.~~

~~(d) Region 4, which consists of Baker, Clay, Duval, Flagler, Nassau, St. Johns~~, and Volusia Counties.

(c) ~~(e)~~ Region C ~~5~~, which consists of ~~Pasco and Pinellas Counties.~~

~~(f) Region 6, which consists of~~ Hardee, Highlands, Hillsborough, Manatee, Pasco, Pinellas, and Polk Counties.

(d) ~~(g)~~ Region D ~~7~~, which consists of Brevard, Orange, Osceola, and Seminole Counties.

(e) ~~(h)~~ Region E ~~8~~, which consists of Charlotte, Collier, DeSoto, Glades, Hendry, Lee, and Sarasota Counties.

(f) ~~(i)~~ Region F ~~9~~, which consists of Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie Counties.

(g) ~~(j)~~ Region G ~~10~~, which consists of Broward County.

(h) ~~(k)~~ Region H ~~11~~, which consists of Miami-Dade and Monroe Counties.

(3) QUALITY SELECTION CRITERIA.—

(a) The invitation to negotiate must specify the criteria and the relative weight of the criteria that will be used for determining the acceptability of the reply and guiding the selection of the organizations with which the agency negotiates. In addition to criteria established by the agency, the agency shall consider the following factors in the selection of eligible plans:

1. Accreditation by the National Committee for Quality

Assurance, the Joint Commission, or another nationally recognized accrediting body.

2. Experience serving similar populations, including the organization's record in achieving specific quality standards with similar populations.

3. Availability and accessibility of primary care and specialty physicians in the provider network.

4. Establishment of community partnerships with providers that create opportunities for reinvestment in community-based services.

5. Organization commitment to quality improvement and documentation of achievements in specific quality improvement projects, including active involvement by organization leadership.

6. Provision of additional benefits, particularly dental care and disease management, and other initiatives that improve health outcomes.

7. Evidence that an eligible plan has obtained signed contracts or written agreements or ~~signed contracts or~~ has made substantial progress in establishing relationships with providers before the plan submits ~~submitting~~ a response.

8. Comments submitted in writing by any enrolled Medicaid provider relating to a specifically identified plan participating in the procurement in the same region as the submitting provider.

9. Documentation of policies and procedures for preventing fraud and abuse.

10. The business relationship an eligible plan has with any other eligible plan that responds to the invitation to

negotiate.

(b) An eligible plan must disclose any business relationship it has with any other eligible plan that responds to the invitation to negotiate. The agency may not select plans in the same region for the same managed care program that have a business relationship with each other. Failure to disclose any business relationship shall result in disqualification from participation in any region for the first full contract period after the discovery of the business relationship by the agency. For the purpose of this section, "business relationship" means an ownership or controlling interest, an affiliate or subsidiary relationship, a common parent, or any mutual interest in any limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly or partially owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities, business associations, or other enterprises, that exists for the purpose of making a profit.

(c) After negotiations are conducted, the agency shall select the eligible plans that are determined to be responsive and provide the best value to the state. Preference shall be given to plans that:

1. Have signed contracts with primary and specialty physicians in sufficient numbers to meet the specific standards established pursuant to s. 409.967(2)(c).

2. Have well-defined programs for recognizing patient-centered medical homes and providing for increased compensation for recognized medical homes, as defined by the plan.

3. Are organizations that are based in and perform

operational functions in this state, in-house or through contractual arrangements, by staff located in this state. Using a tiered approach, the highest number of points shall be awarded to a plan that has all or substantially all of its operational functions performed in the state. The second highest number of points shall be awarded to a plan that has a majority of its operational functions performed in the state. The agency may establish a third tier; however, preference points may not be awarded to plans that perform only community outreach, medical director functions, and state administrative functions in the state. For purposes of this subparagraph, operational functions include corporate headquarters, claims processing, member services, provider relations, utilization and prior authorization, case management, disease and quality functions, and finance and administration. For purposes of this subparagraph, the term "corporate headquarters" means the principal office of the organization, which may not be a subsidiary, directly or indirectly through one or more subsidiaries of, or a joint venture with, any other entity whose principal office is not located in the state.

4. Have contracts or other arrangements for cancer disease management programs that have a proven record of clinical efficiencies and cost savings.

5. Have contracts or other arrangements for diabetes disease management programs that have a proven record of clinical efficiencies and cost savings.

6. Have a claims payment process that ensures that claims that are not contested or denied will be promptly paid pursuant to s. 641.3155.

~~(d) For the first year of the first contract term, the agency shall negotiate capitation rates or fee-for-service payments with each plan in order to guarantee aggregate savings of at least 5 percent.~~

~~1. For prepaid plans, determination of the amount of savings shall be calculated by comparison to the Medicaid rates that the agency paid managed care plans for similar populations in the same areas in the prior year. In regions containing no prepaid plans in the prior year, determination of the amount of savings shall be calculated by comparison to the Medicaid rates established and certified for those regions in the prior year.~~

~~2. For provider service networks operating on a fee-for-service basis, determination of the amount of savings shall be calculated by comparison to the Medicaid rates that the agency paid on a fee-for-service basis for the same services in the prior year.~~

~~(e) To ensure managed care plan participation in Regions 1 and 2, the agency shall award an additional contract to each plan with a contract award in Region 1 or Region 2. Such contract shall be in any other region in which the plan submitted a responsive bid and negotiates a rate acceptable to the agency. If a plan that is awarded an additional contract pursuant to this paragraph is subject to penalties pursuant to s. 409.967(2)(i) for activities in Region 1 or Region 2, the additional contract is automatically terminated 180 days after the imposition of the penalties. The plan must reimburse the agency for the cost of enrollment changes and other transition activities.~~

(d)~~(f)~~ The agency may not execute contracts with managed

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care plans at payment rates not supported by the General Appropriations Act.

(4) ADMINISTRATIVE CHALLENGE.—Any eligible plan that participates in an invitation to negotiate ~~in more than one region and is selected in at least one region~~ may not begin serving Medicaid recipients ~~in any region for which it was selected~~ until all administrative challenges to procurements required by this section to which the eligible plan is a party have been finalized. If the number of plans selected is less than the maximum amount of plans permitted in the region, the agency may contract with other selected plans in the region not participating in the administrative challenge before resolution of the administrative challenge. For purposes of this subsection, an administrative challenge is finalized if an order granting voluntary dismissal with prejudice has been entered by any court established under Article V of the State Constitution or by the Division of Administrative Hearings, a final order has been entered into by the agency and the deadline for appeal has expired, a final order has been entered by the First District Court of Appeal and the time to seek any available review by the Florida Supreme Court has expired, or a final order has been entered by the Florida Supreme Court and a warrant has been issued.

Section 5. Paragraphs (c) and (f) of subsection (2) and subsection (3) of section 409.967, Florida Statutes, are 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

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program. In addition to any other provisions the agency may deem necessary, the contract must require:

(c) *Access.*—

1. The agency shall establish specific standards for the number, type, and regional distribution of providers in managed care plan networks to ensure access to care for both adults and children. Each plan must maintain a regionwide network of providers in sufficient numbers to meet the access standards for specific medical services for all recipients enrolled in the plan. The exclusive use of mail-order pharmacies may not be sufficient to meet network access standards. Consistent with the standards established by the agency, provider networks may include providers located outside the region. ~~A plan may contract with a new hospital facility before the date the hospital becomes operational if the hospital has commenced construction, will be licensed and operational by January 1, 2013, and a final order has issued in any civil or administrative challenge.~~ Each plan shall establish and maintain an accurate and complete electronic database of contracted providers, including information about licensure or registration, locations and hours of operation, specialty credentials and other certifications, specific performance indicators, and such other information as the agency deems necessary. The database must be available online to both the agency and the public and have the capability to compare the availability of providers to network adequacy standards and to accept and display feedback from each provider's patients. Each plan shall submit quarterly reports to the agency identifying the number of enrollees assigned to each primary care provider.

The agency shall conduct, or contract for, systematic and continuous testing of the provider network databases maintained by each plan to confirm accuracy, confirm that behavioral health providers are accepting enrollees, and confirm that enrollees have access to behavioral health services.

2. Each managed care plan must publish any prescribed drug formulary or preferred drug list on the plan's website in a manner that is accessible to and searchable by enrollees and providers. The plan must update the list within 24 hours after making a change. Each plan must ensure that the prior authorization process for prescribed drugs is readily accessible to health care providers, including posting appropriate contact information on its website and providing timely responses to providers. For Medicaid recipients diagnosed with hemophilia who have been prescribed anti-hemophilic-factor replacement products, the agency shall provide for those products and hemophilia overlay services through the agency's hemophilia disease management program.

3. Managed care plans, and their fiscal agents or intermediaries, must accept prior authorization requests for any service electronically.

4. Managed care plans serving children in the care and custody of the Department of Children and Families must maintain complete medical, dental, and behavioral health encounter information and participate in making such information available to the department or the applicable contracted community-based care lead agency for use in providing comprehensive and coordinated case management. The agency and the department shall establish an interagency agreement to provide guidance for the

format, confidentiality, recipient, scope, and method of information to be made available and the deadlines for submission of the data. The scope of information available to the department shall be the data that managed care plans are required to submit to the agency. The agency shall determine the plan's compliance with standards for access to medical, dental, and behavioral health services; the use of medications; and followup on all medically necessary services recommended as a result of early and periodic screening, diagnosis, and treatment.

(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 system must include incentives and disincentives for network providers.

2. Each plan must collect and report the Health Plan Employer Data and Information Set (HEDIS) measures, as specified by the agency. 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 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.~~

(3) ACHIEVED SAVINGS REBATE.—

(a) The agency is responsible for verifying the achieved savings rebate for all Medicaid prepaid plans. To assist the agency, a prepaid plan shall:

1. Submit an annual financial audit conducted by an independent certified public accountant in accordance with generally accepted auditing standards to the agency on or before June 1 for the preceding year; and

2. Submit an annual statement prepared in accordance with statutory accounting principles on or before March 1 pursuant to s. 624.424 if the plan is regulated by the Office of Insurance Regulation.

(b) The agency shall contract with independent certified public accountants to conduct compliance audits for the purpose of auditing financial information, including but not limited to: annual premium revenue, medical and administrative costs, and income or losses reported by each prepaid plan, in order to determine and validate the achieved savings rebate.

(c) Any audit required under this subsection must be conducted by an independent certified public accountant who

meets criteria specified by rule. The rules must also provide that:

1. The entity selected by the agency to conduct the audit may not have a conflict of interest that might affect its ability to perform its responsibilities with respect to an examination.

2. The rates charged to the prepaid plan being audited are consistent with rates charged by other certified public accountants and are comparable with the rates charged for comparable examinations.

3. Each prepaid plan audited shall pay to the agency the expenses of the audit at the rates established by the agency by rule. Such expenses include actual travel expenses, reasonable living expense allowances, compensation of the certified public accountant, and necessary attendant administrative costs of the agency directly related to the examination. Travel expense and living expense allowances are limited to those expenses incurred on account of the audit and must be paid by the examined prepaid plan together with compensation upon presentation by the agency to the prepaid plan of a detailed account of the charges and expenses after a detailed statement has been filed by the auditor and approved by the agency.

4. All moneys collected from prepaid plans for such audits shall be deposited into the Grants and Donations Trust Fund, and the agency may make deposits into such fund from moneys appropriated for the operation of the agency.

(d) At a location in this state, the prepaid plan shall make available to the agency and the agency's contracted certified public accountant all books, accounts, documents,

files, and information that relate to the prepaid plan's Medicaid transactions. Records not in the prepaid plan's immediate possession must be made available to the agency or the certified public accountant in this state within 3 days after a request is made by the agency or certified public accountant engaged by the agency. A prepaid plan has an obligation to cooperate in good faith with the agency and the certified public accountant. Failure to comply to such record requests shall be deemed a breach of contract.

(e) Once the certified public accountant completes the audit, the certified public accountant shall submit an audit report to the agency attesting to the achieved savings of the plan. The results of the audit report are dispositive.

(f) Achieved savings rebates validated by the certified public accountant are due within 30 days after the report is submitted. Except as provided in paragraph (h), the achieved savings rebate is established by determining pretax income as a percentage of revenues and applying the following income sharing ratios:

1. One hundred percent of income up to and including 3 ~~5~~ percent of revenue shall be retained by the plan.

2. Fifty percent of income above 3 ~~5~~ percent and up to 10 percent shall be retained by the plan, and the other 50 percent refunded to the state and transferred to the General Revenue Fund, unallocated.

3. One hundred percent of income above 10 percent of revenue shall be refunded to the state and transferred to the General Revenue Fund, unallocated.

(g) A plan that exceeds agency-defined quality measures in

the reporting period may retain up to an additional 2 ~~1~~ percent of revenue. For the purpose of this paragraph, the quality measures must include two tiers and must include plan performance for preventing or managing complex, chronic conditions that are associated with an elevated likelihood of requiring high-cost medical treatments.

1. If the agency-defined quality or performance targets identified in tier one are met, the plan may retain up to 4 percent of revenue. Fifty percent of income above 4 percent and up to 10 percent must be retained by the plan, and the other 50 percent refunded to the state and transferred to the General Revenue Fund, unallocated.

2. If the agency-defined quality or performance targets identified in tier two are met, the plan may retain up to 5 percent of revenue. Fifty percent of income above 5 percent and up to 10 percent must be retained by the plan, and the other 50 percent refunded to the state and transferred to the General Revenue Fund, unallocated.

(h) The following may not be included as allowable expenses in calculating income for determining the achieved savings rebate:

1. Payment of achieved savings rebates.

2. Any financial incentive payments made to the plan outside of the capitation rate.

3. Any financial disincentive payments levied by the state or federal government.

4. Expenses associated with any lobbying or political activities.

5. The cash value or equivalent cash value of bonuses of

any type paid or awarded to the plan's executive staff, other than base salary.

6. Reserves and reserve accounts.

7. Administrative costs, including, but not limited to, reinsurance expenses, interest payments, depreciation expenses, bad debt expenses, and outstanding claims expenses in excess of actuarially sound maximum amounts set by the agency.

The agency shall consider these and other factors in developing contracts that establish shared savings arrangements.

(i) Prepaid plans that incur a loss in the first contract year may apply the full amount of the loss as an offset to income in the second contract year.

(j) If, after an audit, the agency determines that a prepaid plan owes an additional rebate, the plan has 30 days after notification to make the payment. Upon failure to timely pay the rebate, the agency shall withhold future payments to the plan until the entire amount is recouped. If the agency determines that a prepaid plan has made an overpayment, the agency shall return the overpayment within 30 days.

Section 6. Subsection (2) of section 409.968, Florida Statutes, is amended to read:

409.968 Managed care plan payments.—

(2) Provider service networks must ~~may~~ be prepaid plans and receive per-member, per-month payments negotiated pursuant to the procurement process described in s. 409.966. ~~Provider service networks that choose not to be prepaid plans shall receive fee-for-service rates with a shared savings settlement. The fee-for-service option shall be available to a provider~~

~~service network only for the first 2 years of its operation. The agency shall annually conduct cost reconciliations to determine the amount of cost savings achieved by fee-for-service provider service networks for the dates of service within the period being reconciled. Only payments for covered services for dates of service within the reconciliation period and paid within 6 months after the last date of service in the reconciliation period must be included. The agency shall perform the necessary adjustments for the inclusion of claims incurred but not reported within the reconciliation period for claims that could be received and paid by the agency after the 6 month claims processing time lag. The agency shall provide the results of the reconciliations to the fee-for-service provider service networks within 45 days after the end of the reconciliation period. The fee-for-service provider service networks shall review and provide written comments or a letter of concurrence to the agency within 45 days after receipt of the reconciliation results. This reconciliation is considered final.~~

Section 7. Subsections (3) and (4) of section 409.973, Florida Statutes, are amended to read:

409.973 Benefits.—

(3) HEALTHY BEHAVIORS.—Each plan operating in the managed medical assistance program shall establish a program to encourage and reward healthy behaviors. At a minimum, each plan must establish a medically approved tobacco ~~smoking~~ cessation program, a medically directed weight loss program, and a medically approved alcohol recovery program or substance abuse recovery program that must include, but may not be limited to, opioid abuse recovery. Each plan must identify enrollees who

smoke, are morbidly obese, or are diagnosed with alcohol or substance abuse in order to establish written agreements to secure the enrollees' commitment to participation in these programs.

(4) PRIMARY CARE INITIATIVE.—Each plan operating in the managed medical assistance program shall establish a program to encourage enrollees to establish a relationship with their primary care provider. Each plan shall:

(a) Provide information to each enrollee on the importance of and procedure for selecting a primary care provider, and thereafter automatically assign to a primary care provider any enrollee who fails to choose a primary care provider.

(b) If the enrollee was not a Medicaid recipient before enrollment in the plan, assist the enrollee in scheduling an appointment with the primary care provider. If possible the appointment should be made within 30 days after enrollment in the plan. ~~For enrollees who become eligible for Medicaid between January 1, 2014, and December 31, 2015, the appointment should be scheduled within 6 months after enrollment in the plan.~~

(c) Report to the agency the number of enrollees assigned to each primary care provider within the plan's network.

(d) Report to the agency the number of enrollees who have not had an appointment with their primary care provider within their first year of enrollment.

(e) Report to the agency the number of emergency room visits by enrollees who have not had at least one appointment with their primary care provider.

Section 8. Subsections (1) and (2) of section 409.974, Florida Statutes, are amended to read:

409.974 Eligible plans.—

(1) ELIGIBLE PLAN SELECTION.—The agency shall select eligible plans for the managed medical assistance program through the procurement process described in s. 409.966 through a single statewide procurement. The agency may award contracts to plans selected through the procurement process either on a regional or statewide basis. The awards must include at least one provider service network in each of the eight regions outlined in this subsection. The agency shall procure:

(a) At least 3 plans and up to 4 plans for Region A.

(b) At least 3 plans and up to 6 plans for Region B.

(c) At least 5 plans and up to 10 plans for Region C.

(d) At least 3 plans and up to 6 plans for Region D.

(e) At least 3 plans and up to 4 plans for Region E.

(f) At least 3 plans and up to 5 plans for Region F.

(g) At least 3 plans and up to 5 plans for Region G.

(h) At least 5 plans and up to 10 plans for Region H. ~~The agency shall notice invitations to negotiate no later than January 1, 2013.~~

~~(a) The agency shall procure two plans for Region 1. At least one plan shall be a provider service network if any provider service networks submit a responsive bid.~~

~~(b) The agency shall procure two plans for Region 2. At least one plan shall be a provider service network if any provider service networks submit a responsive bid.~~

~~(c) The agency shall procure at least three plans and up to five plans for Region 3. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(d) The agency shall procure at least three plans and up to five plans for Region 4. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(e) The agency shall procure at least two plans and up to four plans for Region 5. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(f) The agency shall procure at least four plans and up to seven plans for Region 6. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(g) The agency shall procure at least three plans and up to six plans for Region 7. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(h) The agency shall procure at least two plans and up to four plans for Region 8. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(i) The agency shall procure at least two plans and up to four plans for Region 9. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(j) The agency shall procure at least two plans and up to four plans for Region 10. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(k) The agency shall procure at least five plans and up to~~

~~10 plans for Region 11. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

If no provider service network submits a responsive bid, the agency shall procure no more than one less than the maximum number of eligible plans permitted in that region. Within 12 months after the initial invitation to negotiate, the agency shall attempt to procure a provider service network. The agency shall notice another invitation to negotiate only with provider service networks in those regions where no provider service network has been selected.

(2) QUALITY SELECTION CRITERIA.—In addition to the criteria established in s. 409.966, the agency shall consider evidence that an eligible plan has written agreements or signed contracts or has made substantial progress in establishing relationships with providers before the plan submitting a response. The agency shall evaluate and give special weight to evidence of signed contracts with essential providers as defined by the agency pursuant to s. 409.975(1). ~~The agency shall exercise a preference for plans with a provider network in which over 10 percent of the providers use electronic health records, as defined in s. 408.051.~~ When all other factors are equal, the agency shall consider whether the organization has a contract to provide managed long-term care services in the same region and shall exercise a preference for such plans.

Section 9. Paragraph (b) of subsection (1) of section 409.975, Florida Statutes, is amended to read:

409.975 Managed care plan accountability.—In addition to

the requirements of s. 409.967, plans and providers participating in the managed medical assistance program shall comply with the requirements of this section.

(1) PROVIDER NETWORKS.—Managed care plans must develop and maintain provider networks that meet the medical needs of their enrollees in accordance with standards established pursuant to s. 409.967(2)(c). Except as provided in this section, managed care plans may limit the providers in their networks based on credentials, quality indicators, and price.

(b) Certain providers are statewide resources and essential providers for all managed care plans in all regions. All managed care plans must include these essential providers in their networks. Statewide essential providers include:

1. Faculty plans of Florida medical schools.

2. Regional perinatal intensive care centers as defined in s. 383.16(2).

3. Hospitals licensed as specialty children's hospitals as defined in s. 395.002(28).

4. Accredited and integrated systems serving medically complex children which comprise separately licensed, but commonly owned, health care providers delivering at least the following services: medical group home, in-home and outpatient nursing care and therapies, pharmacy services, durable medical equipment, and Prescribed Pediatric Extended Care.

5. Florida cancer hospitals that meet the criteria in 42 U.S.C. s. 1395ww(d)(1)(B)(v).

Managed care plans that have not contracted with all statewide essential providers in all regions as of the first date of

recipient enrollment must continue to negotiate in good faith. Payments to physicians on the faculty of nonparticipating Florida medical schools shall be made at the applicable Medicaid rate. Payments for services rendered by regional perinatal intensive care centers shall be made at the applicable Medicaid rate as of the first day of the contract between the agency and the plan. Except for payments for emergency services, payments to nonparticipating specialty children's hospitals shall equal the highest rate established by contract between that provider and any other Medicaid managed care plan.

Section 10. Subsections (1), (2), (4), and (5) of section 409.977, Florida Statutes, are amended to read:

409.977 Enrollment.—

(1) The agency shall automatically enroll into a managed care plan those Medicaid recipients who do not voluntarily choose a plan pursuant to s. 409.969. The agency shall automatically enroll recipients in plans that meet or exceed the performance or quality standards established pursuant to s. 409.967 and may not automatically enroll recipients in a plan that is deficient in those performance or quality standards. When a specialty plan is available to accommodate a specific condition or diagnosis of a recipient, the agency shall assign the recipient to that plan. ~~In the first year of the first contract term only, if a recipient was previously enrolled in a plan that is still available in the region, the agency shall automatically enroll the recipient in that plan unless an applicable specialty plan is available.~~ Except as otherwise provided in this part, the agency may not engage in practices that are designed to favor one managed care plan over another.

(2) When automatically enrolling recipients in managed care plans, if a recipient was enrolled in a plan immediately before the recipient's choice period and that plan is still available in the region, the agency must maintain the recipient's enrollment in that plan unless an applicable specialty plan is available. Otherwise, the agency shall automatically enroll based on the following criteria:

(a) Whether the plan has sufficient network capacity to meet the needs of the recipients.

(b) Whether the recipient has previously received services from one of the plan's primary care providers.

(c) Whether primary care providers in one plan are more geographically accessible to the recipient's residence than those in other plans.

(4) The agency shall develop a process to enable a recipient with access to employer-sponsored health care coverage to opt out of all managed care plans and to use Medicaid financial assistance to pay for the recipient's share of the cost in such employer-sponsored coverage. ~~Contingent upon federal approval,~~ The agency shall also enable recipients with access to other insurance or related products providing access to health care services created pursuant to state law, including any product available under the Florida Health Choices Program, or any health exchange, to opt out. The amount of financial assistance provided for each recipient may not exceed the amount of the Medicaid premium that would have been paid to a managed care plan for that recipient. The agency shall ~~seek federal approval to~~ require Medicaid recipients with access to employer-sponsored health care coverage to enroll in that coverage and

use Medicaid financial assistance to pay for the recipient's share of the cost for such coverage. The amount of financial assistance provided for each recipient may not exceed the amount of the Medicaid premium that would have been paid to a managed care plan for that recipient.

(5) Specialty plans serving children in the care and custody of the department may serve such children as long as they remain in care, including those remaining in extended foster care pursuant to s. 39.6251, or are in subsidized adoption and continue to be eligible for Medicaid pursuant to s. 409.903, or are receiving guardianship assistance payments and continue to be eligible for Medicaid pursuant to s. 409.903.

Section 11. Subsection (2) of section 409.981, Florida Statutes, is amended to read:

409.981 Eligible long-term care plans.—

(2) ELIGIBLE PLAN SELECTION.—The agency shall select eligible plans for the long-term care managed care program through the procurement process described in s. 409.966 through a single statewide procurement. The agency may award contracts to plans selected through the procurement process on a regional or statewide basis. The awards must include at least one provider service network in each of the eight regions outlined in this subsection. The agency shall procure:

(a) At least 3 plans and up to 4 plans for Region A.

(b) At least 3 plans and up to 6 plans for Region B.

(c) At least 5 plans and up to 10 plans for Region C.

(d) At least 3 plans and up to 6 plans for Region D.

(e) At least 3 plans and up to 4 plans for Region E.

(f) At least 3 plans and up to 5 plans for Region F.

(g) At least 3 plans and up to 4 plans for Region G.

(h) At least 5 plans and up to 10 plans for Region H.

~~Two plans for Region 1. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(b) Two plans for Region 2. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(c) At least three plans and up to five plans for Region 3. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(d) At least three plans and up to five plans for Region 4. At least one plan must be a provider service network if any provider service network submits a responsive bid.~~

~~(e) At least two plans and up to four plans for Region 5. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(f) At least four plans and up to seven plans for Region 6. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(g) At least three plans and up to six plans for Region 7. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(h) At least two plans and up to four plans for Region 8. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(i) At least two plans and up to four plans for Region 9. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(j) At least two plans and up to four plans for Region 10. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(k) At least five plans and up to 10 plans for Region 11. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

If no provider service network submits a responsive bid ~~in a region other than Region 1 or Region 2~~, the agency shall procure no more than one less than the maximum number of eligible plans permitted in that region. Within 12 months after the initial invitation to negotiate, the agency shall attempt to procure a provider service network. The agency shall notice another invitation to negotiate only with provider service networks in regions where no provider service network has been selected.

Section 12. Subsection (4) of section 409.8132, Florida Statutes, is amended to read:

409.8132 Medikids program component.—

(4) APPLICABILITY OF LAWS RELATING TO MEDICAID.—The provisions of ss. 409.902, 409.905, 409.906, 409.907, 409.908, 409.912, 409.9121, 409.9122, 409.9123, ~~409.9124,~~ 409.9127, 409.9128, 409.913, 409.916, 409.919, 409.920, and 409.9205 apply to the administration of the Medikids program component of the Florida Kidcare program, except that s. 409.9122 applies to Medikids as modified by the provisions of subsection (7).

Section 13. For the purpose of incorporating the amendment made by this act to section 409.912, Florida Statutes, in references thereto, subsections (1), (7), (13), and (14) of section 409.962, Florida Statutes, are reenacted to read:

409.962 Definitions.—As used in this part, except as otherwise specifically provided, the term:

(1) "Accountable care organization" means an entity qualified as an accountable care organization in accordance with federal regulations, and which meets the requirements of a provider service network as described in s. 409.912(1).

(7) "Eligible plan" means a health insurer authorized under chapter 624, an exclusive provider organization authorized under chapter 627, a health maintenance organization authorized under chapter 641, or a provider service network authorized under s. 409.912(1) or an accountable care organization authorized under federal law. For purposes of the managed medical assistance program, the term also includes the Children's Medical Services Network authorized under chapter 391 and entities qualified under 42 C.F.R. part 422 as Medicare Advantage Preferred Provider Organizations, Medicare Advantage Provider-sponsored Organizations, Medicare Advantage Health Maintenance Organizations, Medicare Advantage Coordinated Care Plans, and Medicare Advantage Special Needs Plans, and the Program of All-inclusive Care for the Elderly.

(13) "Prepaid plan" means a managed care plan that is licensed or certified as a risk-bearing entity, or qualified pursuant to s. 409.912(1), in the state and is paid a prospective per-member, per-month payment by the agency.

(14) "Provider service network" means an entity qualified pursuant to s. 409.912(1) of which a controlling interest is owned by a health care provider, or group of affiliated providers, or a public agency or entity that delivers health services. Health care providers include Florida-licensed health

care professionals or licensed health care facilities, federally qualified health care centers, and home health care agencies.

Section 14. For the purpose of incorporating the amendment made by this act to section 409.912, Florida Statutes, in a reference thereto, subsection (22) of section 641.19, Florida Statutes, is reenacted to read:

641.19 Definitions.—As used in this part, the term:

(22) "Provider service network" means a network authorized under s. 409.912(1), reimbursed on a prepaid basis, operated by a health care provider or group of affiliated health care providers, and which directly provides health care services under a Medicare, Medicaid, or Healthy Kids contract.

Section 15. For the purpose of incorporating the amendments made by this act to section 409.981, Florida Statutes, in references thereto, paragraphs (h), (i), and (j) of subsection (3) and subsection (11) of section 430.2053, Florida Statutes, are reenacted to read:

430.2053 Aging resource centers.—

(3) The duties of an aging resource center are to:

(h) Assist clients who request long-term care services in being evaluated for eligibility for enrollment in the Medicaid long-term care managed care program as eligible plans become available in each of the regions pursuant to s. 409.981(2).

(i) Provide enrollment and coverage information to Medicaid managed long-term care enrollees as qualified plans become available in each of the regions pursuant to s. 409.981(2).

(j) Assist Medicaid recipients enrolled in the Medicaid long-term care managed care program with informally resolving grievances with a managed care network and assist Medicaid

recipients in accessing the managed care network's formal grievance process as eligible plans become available in each of the regions defined in s. 409.981(2).

(11) In an area in which the department has designated an area agency on aging as an aging resource center, the department and the agency shall not make payments for the services listed in subsection (9) and the Long-Term Care Community Diversion Project for such persons who were not screened and enrolled through the aging resource center. The department shall cease making payments for recipients in eligible plans as eligible plans become available in each of the regions defined in s. 409.981(2).

Section 16. This act shall take effect July 1, 2022.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 17, 2022

I respectfully request that **Senate Bill 1950**, relating to **Statewide Medicaid Managed Care Program**, 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

The Florida Senate

APPEARANCE RECORD

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

2/28/2022
Meeting Date

Approps.
Committee

cs for SB 1950
Bill Number or Topic

399056
Amendment Barcode (if applicable)

Name Ellen Navarro Anderson

Phone

Address 106 E. Jefferson Street
Street

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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:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Moffitt Cancer Center

☐ 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

2/28
Meeting Date

SB 1950
Bill Number or Topic

Senate Appropriations
Committee

Amendment Barcode (if applicable)

Name Cody Farrill

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Address 2727 Mahan Dr.
Street

Email

Tallahassee
City

FL
State

32308
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:
AHCA

☐ 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 Appropriations

BILL:	HB 5011
INTRODUCER:	House Appropriations Committee and Representative Trumbull
SUBJECT:	Budgeting for Inflation that Drives Elevated Needs Fund
DATE:	February 25, 2022
REVISED:	3/1/22

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shettle	Sadberry	AP	**Fav/1 amendment**

Please see Section IX. for Additional Information:

AMENDMENTS - Significant amendments were recommended

I. Summary:

HB 5011 creates the Budgeting for Inflation that Drives Elevated Needs Fund in the Executive Office of the Governor. The bill provides that unprecedented inflation driven by federal economic policies necessitates the need for a reserve to ensure there are sufficient funds available to allow for budget amendments when inflation-driven costs exceed appropriations in the General Appropriations Act.

This bill directs the Chief Financial Officer to immediately transfer $2 billion from the General Revenue Fund to the Fund.

Article III, s. 19(f) of the Florida Constitution requires every trust fund to be created by a three-fifths vote of the membership of each house of the Legislature in a separate bill for the sole purpose of creating a trust fund. The bill creates a trust fund; thus, it requires a three-fifths vote for final passage.

The bill takes effect July 1, 2022.

II. Present Situation:

Trust Funds

A trust fund may be created by law only by the Legislature and only if passed by a three-fifths vote of the membership of each house in a separate bill for that purpose only.[1] Except for trust

[1] Article III, s. 19(f)(a) of the Florida Constitution.

funds being re-created by the Legislature, each trust fund must be created by statutory language that specifies at least the following:

- The name of the trust fund.
- The agency or branch of state government responsible for administering the trust fund.
- The requirements or purposes that the trust fund is established to meet.
- The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.[2]

Pursuant to art. III, s. 19(f)(2) of the Florida Constitution, state trust funds must terminate not more than four years after the effective date of the act authorizing the initial creation of the trust fund. However, the Legislature may set a shorter period for which any trust fund is authorized.

Review of Trust Funds

Prior to the regular session of the Legislature immediately preceding the date on which any executive or judicial branch trust fund is scheduled to be terminated, the agency responsible for the administration of the trust fund and the Governor, for executive branch trust funds, or the Chief Justice, for judicial branch trust funds, must recommend to the Legislature whether a trust fund should be terminated or re-created.[3] Each recommendation must be based on a review of the purpose and use of the trust fund and a determination of whether the trust fund will continue to be necessary. A recommendation to re-create the trust fund may include suggested modifications to the purpose, sources of receipts, and allowable expenditures for the trust fund.[4]

If the trust fund is terminated, all cash balances and income of the trust fund are deposited into the General Revenue Fund.[5] The agency or Chief Justice pays the outstanding debts of the trust fund, and the Chief Financial Officer closes out and removes the trust fund from the state financial systems.[6]

Inflation

Inflation is, essentially, an increase in prices and a corresponding fall in the purchasing value of money. The United States is currently experiencing a period of heightened inflation. Economists point to a variety of factors when inflation rises, but often cite the following as factors that cause inflation – increased money supply, increased consumer spending leading to product scarcity, and supply chain issues, including gasoline costs due to limited oil production. Florida has a consensus estimating conference process that produces economic, demographic, resource-demand and revenue forecasts specifically designed to assist in the planning and budgeting process.[7] There are a total of ten consensus estimating conferences, including the Economic Estimating Conference.[8] The Economic Estimating Conference last met on December 10, 2021, to update the national economic forecast which includes a forecast of the Consumer Price Index

[2] Section 215.3207, F.S.
[3] Section 215.3206(1), F.S.
[4] *Id*.
[5] Section 215.3206(2), F.S.
[6] *Id*.
[7] Sections 216.133, 216.134, 216.135 and 216.136, F.S.
[8] Section 216.136(1), F.S.

(CPI). The CPI is a measure of the average change in prices over time in a fixed market basket of goods and services. At that meeting, the conference made a significant upward revision to its CPI forecast from 3.46 percent to 5.38 percent for FY 2021-22.[9]

Budget Amendments

The General Appropriations Act (GAA) and any other act containing appropriations is considered the original approved operating budget for operational and fixed capital expenditures.[10] To allow for some flexibility, Florida law specifies a process to allow for budget amendments to occur after the GAA becomes law. Amendments to the original operating budget can be made upon request through the Executive Office of the Governor, or through the Chief Justice of the Florida Supreme Court for amendments from the judicial branch, and the Legislative Budget Commission (LBC).[11]

Amendments to an agency's operating budget must comply with certain guidelines in order to be approved.[12] Generally, budget amendments must be consistent with legislative policy and intent. If an amendment involves a trust fund, there must be adequate and appropriate revenues available in the trust fund and the amendment must be consistent with the laws authorizing such trust fund and the laws relating to the use of the trust fund. A budget amendment must include a written description of the purpose of the proposed change, an indication of why interim budget action is necessary, and the intended recipient of any funds for contracted services.[13]

Budget amendments are prohibited which:[14]

- Restore items vetoed by the Governor;
- Initiate or commence a new program or a fixed capital outlay project or eliminate an existing program;
- Restore budget reductions which were taken after a deficit was determined to have occurred and actions were taken to reduce approved operating budgets;
- Provide funding or increase funding for any issue which was requested by an agency in their budget request which were not funded by the Legislature or that were funded at a lower level than requested;
- Provide a net increase in General Revenue Fund appropriations;
- Transfer budget between state agencies without specific statutory authorization to do so;
- Provide general salary increases which the Legislature has not authorized in the GAA;
- Would allow the use of fixed capital outlay appropriations for any other purpose; or
- Conflict with any provision of law.

[9] *See* National Economic Estimating Conference Long-Run Tables, December 10, 2021, at: http://edr.state.fl.us/Content/conferences/useconomic/LongRunTables.pdf Note that the forecast includes a number of different indices related to prices in addition to CPI, all of which had significant upward revisions for FY 2021-22. *See* pp. 11-12.
[10] Section 216.181(1), F.S.
[11] Sections 216.181 and 216.292, F.S.
[12] *See* s. 216.181, F.S.
[13] Section 216.181(2), F.S.
[14] Sections 216.181(2), 216.221(11), and 216.292(1), F.S.

All amendments to original approved operating budgets, regardless of funding source, are subject to the notice and objection procedures in s. 216.177, F.S.[15] Generally, Florida law requires the Executive Office of the Governor or the Chief Justice of the Florida Supreme Court to provide notice of a proposed budget amendment to the chair and vice chair of the LBC in writing, at least 14 days prior to the budget action, unless a shorter period is approved in writing by the chair and vice chair or a different period is specified in law.[16]

III. Effect of Proposed Changes:

The bill creates the Budgeting for Inflation that Drives Elevated Needs Fund within the Executive Office of the Governor. The bill provides that the legislature recognizes that federal economic policies have resulted in unprecedented inflation, and that Florida must take action to ensure there is a sufficient source of funds to provide flexibility for budget amendments necessary to offset inflation spikes. Budget amendments which are in excess of $1 million will require approval by the LBC pursuant to s. 216.181(11)(b), F.S.

The bill directs the Chief Financial Officer to immediately transfer $2 billion from the General Revenue Fund to the Fund.

The bill specifies that the Budgeting for Inflation that Drives Elevated Needs Fund must be terminated on July 1, 2026, unless terminated sooner. Before its scheduled termination, the bill requires the trust fund to be reviewed.

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.

[15] Section 216.181(3), F.S.
[16] Section 216.177(2)(a), F.S.

E. Other Constitutional Issues:

Article III, s. 19(f) of the State Constitution requires all newly created trust funds to terminate not more than four years after the initial creation of the fund. In addition, the State Constitution requires a newly created or re-created trust fund to be adopted by three-fifths vote of the membership of each house of the Legislature in a separate bill for the sole purpose of creating or re-creating the fund. This bill creates a trust fund; thus, it requires a three-fifths vote on final passage.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill directs the Chief Financial Officer to immediately transfer $2 billion from the General Revenue Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 216.1813 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

Barcode 147946 by Appropriations on February 28, 2022:
The amendment changes the name of the trust fund from the Budgeting for Inflation that

Drives Elevated Needs Fund to the Inflation Fund. Removes the transfer of $2 billion from the General Revenue Fund to the trust fund.
(WITH TITLE AMENDMENT)

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

147946

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/01/2022	.	
Floor: 1/AD/2R	.	
03/02/2022 10:21 AM	.	
	.	

The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 216.1813, Florida Statutes, is created to read:

216.1813 Inflation Fund.—

(1) The Inflation Fund is created within the Executive Office of the Governor.

(2) The Legislature recognizes that federal economic

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policies have resulted in an unprecedented increase in inflation. Unwieldy federal spending during the COVID-19 pandemic has contributed to consumer prices soaring at a pace faster than that seen in over 30 years. As such, Florida must take action to ensure the existence of a sufficient source of funds, as appropriated in the General Appropriations Act, is available to provide spending flexibility if budget amendments are necessary to offset inflation spikes. The Inflation Fund is established as the primary funding source to offset budget amendments by an agency or the judicial branch which are necessary to counter increased inflation that exceeds funds appropriated in the General Appropriations Act.

(3) In accordance with s. 19(f)(2), Art. III of the State Constitution, the Inflation Fund within the Executive Office of the Governor shall, unless terminated sooner, be terminated on July 1, 2026. Before its scheduled termination, the trust fund shall be reviewed as provided in s. 215.3206(1) and (2).

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 the Inflation Fund; creating s. 216.1813, F.S.; creating the Inflation Fund within the Executive Office of the Governor; providing the purpose of the fund; providing for the deposit and use of funds; providing for future review and termination

147946

of the fund; providing an effective date.

A bill to be entitled

An act relating to the Budgeting for Inflation that Drives Elevated Needs Fund; creating s. 216.1813, F.S.; creating the Budgeting for Inflation that Drives Elevated Needs Fund within the Executive Office of the Governor; providing the purpose of the fund; providing for the deposit and use of funds; providing for future review and termination of the fund; directing the Chief Financial Officer to transfer a specified amount to the fund; providing an effective date.

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

Section 1. Section 216.1813 Florida Statutes, is created to read:

216.1813 Budgeting for Inflation that Drives Elevated Needs Fund.—

(1) The Budgeting for Inflation that Drives Elevated Needs Fund is created within the Executive Office of the Governor.

(2) The Legislature recognizes that federal economic policies have resulted in an unprecedented increase in inflation. Unwieldy federal spending during the COVID-19 pandemic has contributed to consumer prices soaring at a pace faster than that seen in over 30 years. As such, Florida must take action to ensure the existence of a sufficient source of

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

FLORIDA HOUSE OF REPRESENTATIVES

HB 5011 2022

funds to provide spending flexibility if budget amendments are necessary to offset inflation spikes. The Budgeting for Inflation that Drives Elevated Needs Fund is established as the primary funding source to offset budget amendments by an agency or the judicial branch that are necessary to counter increased inflation that exceed funds appropriated in the General Appropriations Act.

(3) In accordance with s. 19(f)(2), Art. III of the State Constitution, the Budgeting for Inflation that Drives Elevated Needs Fund within the Executive Office of the Governor shall, unless terminated sooner, be terminated on July 1, 2026. Before its scheduled termination, the trust fund shall be reviewed as provided in s. 215.3206(1) and (2).

Section 2. The Chief Financial Officer shall immediately transfer $2 billion from the General Revenue Fund to the Budgeting for Inflation that Drives Elevated Needs Fund.

Section 3. This act shall take effect July 1, 2022.

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

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147946

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/01/2022	.	
Floor: 1/AD/2R	.	
03/02/2022 10:21 AM	.	
	.	

The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 216.1813, Florida Statutes, is created to read:

216.1813 Inflation Fund.—

(1) The Inflation Fund is created within the Executive Office of the Governor.

(2) The Legislature recognizes that federal economic

147946

policies have resulted in an unprecedented increase in inflation. Unwieldy federal spending during the COVID-19 pandemic has contributed to consumer prices soaring at a pace faster than that seen in over 30 years. As such, Florida must take action to ensure the existence of a sufficient source of funds, as appropriated in the General Appropriations Act, is available to provide spending flexibility if budget amendments are necessary to offset inflation spikes. The Inflation Fund is established as the primary funding source to offset budget amendments by an agency or the judicial branch which are necessary to counter increased inflation that exceeds funds appropriated in the General Appropriations Act.

(3) In accordance with s. 19(f)(2), Art. III of the State Constitution, the Inflation Fund within the Executive Office of the Governor shall, unless terminated sooner, be terminated on July 1, 2026. Before its scheduled termination, the trust fund shall be reviewed as provided in s. 215.3206(1) and (2).

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 the Inflation Fund; creating s. 216.1813, F.S.; creating the Inflation Fund within the Executive Office of the Governor; providing the purpose of the fund; providing for the deposit and use of funds; providing for future review and termination

147946

of the fund; providing an effective date.

The Florida Senate

APPEARANCE RECORD

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

2/28/2022
Meeting Date

Approps
Committee

HB 5011
Bill Number or Topic

Amendment Barcode (if applicable)

Name Karen Woodall

Phone

Address 579 E. Call St.
Street

Email fcfep@yahoo.com

Tallahassee FL 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Fl Center for Fiscal & Economic Policy

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

28 Feb. 2022
Meeting Date

Appropriations
Committee

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

HB 5011
Bill Number or Topic

Amendment Barcode (if applicable)

Name Elizabeth Hollister

Phone (850) 524-2139

Address 1800 Old Fort Drive
Street

Email bethholl@yahoo.com

Tallahassee, FL 32301
City *State* *Zip*

The "BIDEN" Fund represents a lack of understanding of the actual causes of inflation. It is mean-spirited + political pandering, and disrespectful to at least half of the Floridians you represent.

Speaking: ☐ For ☐ Against ☐ Information **OR** 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 Appropriations

BILL:	HB 5015
INTRODUCER:	House Appropriations Committee and Representative Perez
SUBJECT:	Evaluation of Significant State Risks
DATE:	February 25, 2022
REVISED:	3/1/22

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shettle	Sadberry	AP	**Fav/1 amendment**

Please see Section IX. for Additional Information:

AMENDMENTS - Significant amendments were recommended

I. Summary:

HB 5015 creates the Legislative Office of Risk Assessment, a joint unit of the Legislature, which will be headed by a Chief Risk Officer. The bill requires the office to:

- Identify significant risks to the state and develop and biennially update a State Risk Register;
- Identify potential cost-effective interventions to mitigate the risks included in the State Risk Register;
- Estimate the economic damage associated with the risks identified in the State Risk Register within a 10-year and 30-year timeframe;
- Estimate the anticipated reduction in economic damage associated with the potential interventions within a 10-year and 30-year timeframe; and
- Provide the Legislature with a process and the analytical tools required to consider and manage significant risks comprehensively and not in isolation over a 10-year and 30-year period. The office must develop a support process capable of providing comparisons of the cost-effectiveness of different combinations of interventions for all risks included in the State Risk Register based on the anticipated level of economic damage in adverse cases and the investment in interventions over both a 10-year and 30-year timeframe.

By July 1, 2023, the office must submit to the Legislative Budget Commission (LBC) a State Risk Register and a list of potential cost-effective interventions to mitigate the risks include in the State Risk Register. The submission must include the estimates of the economic damage associated with the significant risks identified in the State Risk Register and the estimates of the anticipated reduction in economic damage associated with all identified interventions within a 10-year and 30-year period. The State Risk Register must be updated biennially thereafter and submitted to the LBC.

By July 1, 2024, and each July 1 thereafter, the office must prepare and submit to the President of the Senate and Speaker of the House of Representatives an annual progress report, using evaluation metrics to assess the state's progress in mitigating the economic damage associated with the significant risks identified in the State Risk Register over a 10-year and 30-year period. The annual progress report must also identify emerging risks for inclusion in the next annual update to the State Risk Register.

The bill creates a Risk Estimating Conference. The bill provides that the conference must develop estimates of the economic damage associated with risks identified in the State Risk Register and the reduction in the potential economic damage associated with the risks in the State Risk Register anticipated to result from potential interventions intended to mitigate such damages.

The fiscal impact of the bill is indeterminate.

II. Present Situation:

The Office of Economic and Demographic Research is a research arm of the Legislature principally concerned with forecasting economic and social trends that affect policy making, revenues, and appropriations. Estimating conferences include those focused on criminal justice, demographics, early learning, the Florida Retirement System, and economics.[1] Such forecasts are essential for a variety of government planning and budgeting functions, including ensuring that Florida meets its constitutional balanced budget requirement.

While the state takes great measures to ensure economic and demographic forecasts are used to plan for anticipated needs of the state, there is no process to evaluate significant risks comprehensively or to evaluate interventions available to mitigate such risks. Risks to the state include cybersecurity, communicable diseases, water quality and quantity, and natural disasters among others. State reserves have been sufficient to address risks, including declared states of emergency, thus far. There is, however, no comprehensive fiscal strategy to reduce risks across the board.

III. Effect of Proposed Changes:

The bill creates the Legislative Office of Risk Assessment, a joint unit of the Legislature governed by the Joint Rules of the Senate and House of Representatives. The bill provides that the office will be headed by a Chief Risk Officer, appointed by and serving at the pleasure of the President of the Senate and the Speaker of the House of Representatives. The Chief Risk Officer may employ qualified individuals and contract for professional services necessary to carry about the duties of the office, subject to approval of the President of the Senate and Speaker of the House of Representatives.

The bill requires the office to:

[1] Consensus Estimating Conferences, EDR, http://edr.state.fl.us/Content/conferences/index.cfm (last visited February 7, 2022).

- Identify significant risks to the state and develop and biennially update a State Risk Register. The Register must identify the most significant risks to the state over a 10-year and 30-year timeframe. Risks must be measured by the estimated value of cash damages during the timeframe and by the estimated peak state gross domestic product decline during the same period.
- Identify potential cost-effective interventions to mitigate the risks included in the State Risk Register.
- Estimate the economic damage associated with the risks identified in the State Risk Register within a 10-year and 30-year timeframe.
- Estimate the anticipated reduction in economic damage associated with the potential interventions within a 10-year and 30-year timeframe.
- Provide the Legislature with a process and the analytical tools required to consider and manage significant risks comprehensively and not in isolation over a 10-year and 30-year period. The office must develop a support process capable of providing comparisons of the cost-effectiveness of different combinations of interventions for all risks included in the State Risk Register based on the anticipated level of economic damage in adverse cases and the investment in interventions over both a 10-year and 30-year timeframe.

By July 1, 2023, the office must submit to the Legislative Budget Commission (LBC) a State Risk Register and a list of potential cost-effective interventions to mitigate the risks include in the State Risk Register. The submission must include the estimates of the economic damage associated with the significant risks identified in the State Risk Register and the estimates of the anticipated reduction in economic damage associated with all identified interventions within a 10-year and 30-year period.

By July 1, 2024, and each July 1 thereafter, the office must prepare and submit to the President of the Senate and Speaker of the House of Representatives an annual progress report, with the report using evaluation metrics to assess the state's progress in mitigating the economic damage associated with the significant risks identified in the State Risk Register over a 10-year and 30-year period. The annual progress report must also identify emerging risks for inclusion in the next annual update to the State Risk Register.

By July 1, 2025, and by July 1 of each odd year thereafter, the bill requires the office to submit to the LBC an updated State Risk Register. The submission must include the estimates of the economic damage associated with the significant risks identified in the State Risk Register and the estimates of the anticipated reduction in economic damage associated with all identified interventions within a 10-year and 30-year period.

The bill creates a Risk Estimating Conference. The bill provides that the conference must develop estimates of the economic damage associated with risks identified in the State Risk Register and the reduction in the potential economic damage associated with the risks in the State Risk Register anticipated to result from potential interventions intended to mitigate such damages.

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 creates a joint legislative office dedicated to identifying and evaluating significant risks to the state and identifying and evaluating intervention strategies to reduce the risks to the state over a 10-year and 30-year period. Creation of the joint legislative office will have an indeterminate, yet likely insignificant fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 216.136, Florida Statutes.

This bill creates section 11.9006, Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

Barcode 392560 by Appropriations on February 28, 2022:
The amendment:

- Revises the duties of the Legislative Office of Risk Assessment to only include identifying significant and current future risks to the state over a 10-year and 30-year timeframe, and identifying potential interventions to mitigate the risks;
- Authorizes the President of the Senate or the Speaker of the House of Representatives to convene a special estimating conference to develop estimates of potential economic damages from posed risks;
- Requires the office to submit an annual report to the President and the Speaker; and
- Sunsets the office on June 30, 2027.

(WITH TITLE AMENDMENT)

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

392560

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/01/2022	.	
Floor: 1/AD/2R	.	
03/02/2022 10:19 AM	.	
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The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 11.9006, Florida Statutes, is created to read:

11.9006 Legislative Office of Risk Assessment.—

(1) There is created the Legislative Office of Risk Assessment, which shall be a joint unit of the Legislature governed by the joint rules of the Senate and the House of

392560

Representatives. The office shall be headed by a chief risk officer appointed by and serving at the pleasure of the President of the Senate and the Speaker of the House of Representatives. Subject to the approval of the President of the Senate and the Speaker of the House of Representatives, the chief risk officer may employ qualified individuals and contract for professional services necessary to carry out the duties of the office.

(2) The office shall:

(a) Identify significant current and future risks to the state over a 10-year and 30-year timeframe. Identified risks shall be classified as high, medium, or low risk, based on the probability of the risk actually occurring.

(b) Identify potential interventions to mitigate the risks identified.

(3) The potential economic damage caused by risks identified by the office and the reduction in such economic damage produced by potential interventions are solely determined pursuant to s. 216.138(1)(b).

(4) By July 1, 2023, and annually thereafter, the office shall submit to the President of the Senate and the Speaker of the House of Representatives a report identifying the significant risks to the state and a list of potential interventions to mitigate the risks.

(5) This section is repealed June 30, 2027, unless reviewed and saved from repeal by the Legislature.

Section 2. Subsection (1) of section 216.138, Florida Statutes, is amended to read:

216.138 Authority to request additional analysis of

392560

legislative proposals; significant risks to the state.—

(1)(a) The President of the Senate or the Speaker of the House of Representatives may request special impact estimating conferences to evaluate legislative proposals based on tools and models not generally employed by the consensus estimating conferences, including cost-benefit, return-on-investment, or dynamic scoring techniques, when suitable and appropriate for the legislative proposals being evaluated.

(b) The President of the Senate or the Speaker of the House of Representatives may request special impact estimating conferences to develop estimates of the economic damage associated with significant risks to the state and the reduction to such economic damage anticipated to result from an intervention identified pursuant to s. 11.9006(2).

Section 3. 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 the evaluation of significant state risks; creating s. 11.9006, F.S.; creating the Legislative Office of Risk Assessment; providing that the office shall be headed by a chief risk officer; providing powers and duties of the office; specifying the method for determining the economic damage estimates related to risks and interventions; requiring the office to annually submit, by a

392560

specified date, a report to the Legislature; providing for future legislative review and repeal; amending s. 216.138, F.S.; authorizing the President of the Senate or the Speaker of the House of Representatives to convene a special estimating conference to estimate the economic damage associated with the significant risks to the state the potential reduction associated with intervention strategies; providing an effective date.

A bill to be entitled

An act relating to the evaluation of significant state risks; creating s. 11.9006, F.S.; creating the Legislative Office of Risk Assessment; providing that the office shall be headed by a chief risk officer; providing powers and duties of the office; requiring the office to develop and update a State Risk Register; providing requirements for the State Risk Register; requiring the office to provide a certain process and analytical tools to the Legislature; requiring the office to develop a decision support process to compare the cost-effectiveness of certain interventions; requiring the office to biennially submit the register and a certain list to the Legislative Budget Commission; requiring the office to submit an annual progress report to the Legislature; providing specifications for the annual progress report; amending s. 216.136, F.S.; establishing a Risk Estimating Conference; requiring the conference to estimate the economic damage associated with the risks identified in the State Risk Register and the potential reduction associated with intervention strategies; providing an effective date.

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

Section 1. Section 11.9006, Florida Statutes, is created to read:

11.9006 Legislative Office of Risk Assessment.—

(1) There is created the Legislative Office of Risk Assessment, which shall be a joint unit of the Legislature governed by the joint rules of the Senate and the House of Representatives. The office shall be headed by a chief risk officer appointed by and serving at the pleasure of the President of the Senate and the Speaker of the House of Representatives. Subject to the approval of the President of the Senate and the Speaker of the House of Representatives, the chief risk officer may employ qualified individuals and contract for professional services necessary to carry out the duties of the office.

(2) The office shall:

(a) Identify significant risks to the state and develop and biennially update a State Risk Register. The State Risk Register must identify the most significant risks to the state over a 10-year and 30-year timeframe. Risks shall be measured by the estimated value of cash damages during the 10-year timeframe and the 30-year timeframe and by the estimated peak state gross domestic product decline during the 10-year timeframe and 30-year timeframe.

(b) Identify potential cost-effective interventions to

mitigate the risks identified in the State Risk Register.

(c) Estimate the economic damage associated with the significant risks identified in the State Risk Register within a 10-year and 30-year timeframe.

(d) Estimate the anticipated reduction in economic damage associated with the potential interventions within a 10-year and 30-year timeframe.

(e) Provide to the Legislature a process and the analytical tools required to consider and manage significant risks comprehensively and not in isolation over a 10-year and 30-year timeframe. The office shall develop a decision support process capable of providing comparisons of the cost-effectiveness of different combinations of interventions for all risks included in the State Risk Register based on the anticipated level of economic damage in adverse cases and the investment in interventions over a 10-year and 30-year timeframe.

(3) By July 1, 2023, the office shall submit to the Legislative Budget Commission a State Risk Register and a list of potential cost-effective interventions to mitigate the risks included in the State Risk Register. The submission shall include the estimates of the economic damage associated with the significant risks identified in the State Risk Register and estimates of the anticipated reduction in economic damage associated with the risks for all identified interventions

within a 10-year and 30-year timeframe.

(4) By July 1, 2025, and biennially thereafter, the office shall submit to the Legislative Budget Commission an updated State Risk Register and a list of potential cost-effective interventions to mitigate the risks included in the State Risk Register. The submission shall include the estimates of the economic damage associated with the significant risks identified in the State Risk Register and estimates of the anticipated reduction in economic damage associated with the risks for all identified interventions within a 10-year and 30-year timeframe.

(5) By July 1, 2024, and annually thereafter, the office shall prepare and submit to the President of the Senate and the Speaker of the House of Representatives an annual progress report that uses evaluation metrics to assess the state's progress in mitigating the economic damage associated with the significant risks identified in the State Risk Register over a 10-year and 30-year timeframe. The annual progress report also shall identify emerging risks for inclusion in the next annual update to the State Risk Register.

Section 2. Subsection (11) is added to section 216.136, Florida Statutes, to read:

216.136 Consensus estimating conferences; duties and principals.—

(11) RISK ESTIMATING CONFERENCE.—The Risk Estimating Conference shall develop estimates of the economic damage

associated with the risks identified in the State Risk Register and the reduction in the potential economic damage associated with the risks in the State Risk Register anticipated to result from potential interventions intended to mitigate such damage.

Section 3. This act shall take effect July 1, 2022.

392560

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/01/2022	.	
Floor: 1/AD/2R	.	
03/02/2022 10:19 AM	.	
	.	

The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 11.9006, Florida Statutes, is created to read:

11.9006 Legislative Office of Risk Assessment.—

(1) There is created the Legislative Office of Risk Assessment, which shall be a joint unit of the Legislature governed by the joint rules of the Senate and the House of

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Representatives. The office shall be headed by a chief risk officer appointed by and serving at the pleasure of the President of the Senate and the Speaker of the House of Representatives. Subject to the approval of the President of the Senate and the Speaker of the House of Representatives, the chief risk officer may employ qualified individuals and contract for professional services necessary to carry out the duties of the office.

(2) The office shall:

(a) Identify significant current and future risks to the state over a 10-year and 30-year timeframe. Identified risks shall be classified as high, medium, or low risk, based on the probability of the risk actually occurring.

(b) Identify potential interventions to mitigate the risks identified.

(3) The potential economic damage caused by risks identified by the office and the reduction in such economic damage produced by potential interventions are solely determined pursuant to s. 216.138(1)(b).

(4) By July 1, 2023, and annually thereafter, the office shall submit to the President of the Senate and the Speaker of the House of Representatives a report identifying the significant risks to the state and a list of potential interventions to mitigate the risks.

(5) This section is repealed June 30, 2027, unless reviewed and saved from repeal by the Legislature.

Section 2. Subsection (1) of section 216.138, Florida Statutes, is amended to read:

216.138 Authority to request additional analysis of

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legislative proposals; significant risks to the state.—

(1)(a) The President of the Senate or the Speaker of the House of Representatives may request special impact estimating conferences to evaluate legislative proposals based on tools and models not generally employed by the consensus estimating conferences, including cost-benefit, return-on-investment, or dynamic scoring techniques, when suitable and appropriate for the legislative proposals being evaluated.

(b) The President of the Senate or the Speaker of the House of Representatives may request special impact estimating conferences to develop estimates of the economic damage associated with significant risks to the state and the reduction to such economic damage anticipated to result from an intervention identified pursuant to s. 11.9006(2).

Section 3. 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 the evaluation of significant state risks; creating s. 11.9006, F.S.; creating the Legislative Office of Risk Assessment; providing that the office shall be headed by a chief risk officer; providing powers and duties of the office; specifying the method for determining the economic damage estimates related to risks and interventions; requiring the office to annually submit, by a

392560

specified date, a report to the Legislature; providing for future legislative review and repeal; amending s. 216.138, F.S.; authorizing the President of the Senate or the Speaker of the House of Representatives to convene a special estimating conference to estimate the economic damage associated with the significant risks to the state the potential reduction associated with intervention strategies; providing an effective date.

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 Appropriations

BILL:	HB 5301
INTRODUCER:	State Administration and Technology Appropriations Subcommittee; and Representative Stevenson
SUBJECT:	Capitol Center
DATE:	February 25, 2022
REVISED:	3/1/22

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Davis	Sadberry	AP	**Fav/1 amendment**

Please see Section IX. for Additional Information:

AMENDMENTS - Significant amendments were recommended

I. Summary:

HB 5301 requires the Department of Management Services (DMS) to:

- Consult with the Governor, the President of the Senate, and the Speaker of the House of Representatives before closing or reopening buildings within the Capitol Center during and after a state of emergency.
- Submit a Capitol Center maintenance and upkeep report by December 1, 2022, and annually thereafter to the Governor, President of the Senate, and the Speaker of the House of Representatives.
- Consult with the Governor, Attorney General, Chief Financial Officer, Commissioner of Agriculture, President of the Senate, and Speaker of the House of Representatives, prior to implementing or amending a change in design or functional use of a facilities project within the Capitol Complex.
- Provide recommendations to be considered by the Governor, Attorney General, Chief Financial Officer, Commissioner of Agriculture, President of the Senate, and Speaker of the House of Representatives before constructing and placing a monument on the premises of the Capitol Complex.

In addition, the Florida Historical Commission must provide recommendations to the Governor, Attorney General, Chief Financial Officer, Commissioner of Agriculture, President of the Senate, and Speaker of the House of Representatives on the design and placement of monuments authorized to be placed on the premises of the Capitol Complex.

The bill conforms to the proposed House of Representatives' Fiscal Year 2022-2023 General Appropriation Act (GAA). Since Fiscal Year 2016-2017, the DMS has been provided a total of $178.9 million for major repairs, maintenance, and renovation of the Capitol Complex. The GAA contains funds for the continued renovation and maintenance of the Capitol Building and grounds. S*ee* Section V, Fiscal Impact Statement.

The bill is effective July 1, 2022.

II. Present Situation:

Managing the Capitol Center

Chapter 272, F.S., provides that the Capitol Center[1] is under the general control and supervision of the DMS,[2] which includes the management and maintenance of both the grounds and buildings.[3] Additionally, the DMS has the authority to provide for the establishment of parks, walkways, and parkways on the grounds of the Capitol Center.[4] This responsibility has historically included assistance in establishing and maintaining public memorials throughout the Capitol Center, including project management oversight of the design and construction of memorials.[5] After an entity is assigned a designated space within the Capitol Center for an exhibit, the entity is the manager of the exhibit's content and display, in consultation with the DMS.[6]

The term "Capitol Complex" is defined to include:

> that portion of Tallahassee, Leon County, Florida, commonly referred to as the Capitol, the Historic Capitol, the Senate Office Building, the House Office Building, the Knott Building, the Pepper Building, the Holland Building, and the curtilage of each, including the state-owned lands and public streets adjacent thereto within an area bounded by and including Monroe Street, Jefferson Street, Duval Street, and Gaines Street. The term shall also include the State Capital Circle Office Complex located in Leon County, Florida.[7]

The management, maintenance, and upkeep of the Capital Complex is the obligation of the DMS, which has authority to employ a superintendent of the grounds and other employees, and is authorized to designate or appoint a nonsalaried advisory committee to advise them.[8]

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[1] Section 272.12, F.S., describes the Tallahassee area bound by South Martin Luther King, Jr. Boulevard, East and West College Avenue, Franklin Boulevard, East Jefferson Street, and the Seaboard Coastline Railway right-of-way as the Capitol Center.
[2] Section 272.03, F.S.
[3] Section 272.09, F.S.
[4] Section 272.07, F.S.
[5] *See* DMS, *2014 Agency Legislative Bill Analysis for SB 608* at 2 (Feb. 19, 2014) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).
[6] *Id*.
[7] Section 281.01, F.S.
[8] Section 272.09, F.S.

The DMS is authorized to allocate space to house various departments, agencies, boards, and commissions except the Supreme Court Building.[9] However, there is no statutory authority allowing the DMS to close the Capitol Center, or any other DMS managed buildings, to the public during a declared state of emergency.

Capitol Complex Monuments

A monument is defined as "a marker, statue, sculpture, plaque, or other artifice, including living plant material, placed in remembrance or recognition of a significant person or event in Florida history."[10] The DMS is required to set aside an area of the Capitol Complex to dedicate a memorial garden on which authorized monuments must be placed.[11] The construction and placement of a monument on the premises of the Capitol Complex is prohibited unless authorized by general law and unless the design and placement of the monument is approved by the DMS after considering the recommendations[12] of the Florida Historical Commission.[13] Additionally, the DMS must coordinate with the Division of Historical Resources of the Department of State regarding a monument's design and placement.[14]

III. Effect of Proposed Changes:

Maintenance and Management

The bill amends s. 272.09, F.S., to require the DMS to submit a Capitol Center maintenance and upkeep report by December 1, 2022, and annually thereafter to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must describe the Capitol Center maintenance and repairs provided in the prior year and planned for the upcoming year and must include the costs of prior repairs and cost estimates for future repairs. Additionally, the report should describe any necessary structural modifications, security improvements, and major repairs to the buildings and grounds.

The bill amends s. 272.04, F.S., to require the DMS to consult with the Governor, the President of the Senate, and the Speaker of the House of Representatives before closing buildings within the Capitol Center during a state of emergency declared pursuant to s. 252.36, F.S. Additionally, if buildings within the Capitol Center are closed, the DMS is required to consult with the Governor, the President of the Senate, and the Speaker of the House of Representatives before reopening buildings.

Additionally, the bill specifies that any facilities project within the Capitol Complex that requires a change in design or functional use of the Capitol Complex must be developed in consultation with, and may not be implemented, changed, or amended unless approved by, the following persons:

- The Governor, or his or her designee.

[9] Section 272.04, F.S.
[10] Section 265.111(1), F.S.
[11] Section 265.111(3), F.S.
[12] The Florida Historical Commission is required to provide recommendations to DMS on the design and placement of monuments authorized by general law pursuant to s. 267.0612(9), F.S.
[13] Section 265.111(2), F.S.
[14] *Id*.

- The Attorney General, or his or her designee.
- The Chief Financial Officer, or his or her designee.
- The Commissioner of Agriculture, or his or her designee.
- The President of the Senate, or his or her designee.
- The Speaker of the House of Representatives, or his or her designee.

Capitol Complex Monuments

The bill amends s. 265.111, F.S., to prohibit the construction and placement of a monument on the premises of the Capitol Complex unless authorized by general law and the design and monument placement is proved, after considering the recommendations of the DMS and the Florida Historical Commission, by the following persons:

- The Governor, or his or her designee.
- The Attorney General, or his or her designee.
- The Chief Financial Officer, or his or her designee.
- The Commissioner of Agriculture, or his or her designee.
- The President of the Senate, or his or her designee.
- The Speaker of the House of Representatives, or his or her designee.

The bill amends s. 267.0612, F.S., to specify that the Florida Historical Commission shall make recommendations on design and placement of monuments authorized by law to be placed on the premises of the Capitol Complex to the Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, the President of the Senate, and the Speaker of the House of Representatives.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires the DMS to produce an annual Capitol Center Maintenance and Upkeep Report by December 1, 2022, and annually thereafter related to funding needed for the Capital Center repairs and maintenance. The report will allow the Governor and the Legislature to have improved oversight and the ability to plan for upcoming expenditures for repairs and maintenance.

Since Fiscal Year 2016-2017, the DMS has been provided a total of $178.9 million for major repairs, maintenance, and renovation of the Capitol Complex. The House and Senate garage renovations cost approximately $62.2 million. A total of $40.6 million was provided for the rebuilding of Waller Park (west side of the Capitol). Other major funding provided for repairs in recent years include the replacement of the Capitol elevators ($20.2 million) and the heating and cooling system replacement ($40.6 million), set to begin in 2022. In 2022, the DMS will begin the window replacement project for the Capitol Building and the House and Senate Office Buildings ($15.3 million provided to date).[15]

The bill conforms to the proposed House of Representatives' Fiscal Year 2022-2023 GAA. The GAA contains funds for the continued renovation and maintenance of the Capitol Building and grounds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 265.111, 267.0612, 272.04, and 272.09.

[15] Email from the Department of Management Services, RE: FCO Numbers (Jan. 31, 2022).

IX. Additional Information:

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

None.

B. Amendments:

Barcode 521994 by Appropriations on February 28, 2022:
The amendment:

- Removes requirement that the DMS consult with the Governor, Attorney General, Chief Financial Officer, Commissioner of Agriculture, President of the Senate, and Speaker of the House of Representatives prior to implementing or amending a change in design or functional use of a facilities project within the Capitol Complex.
- Defines the term "Capitol Complex".
- Requires the DMS to submit an annual report detailing the maintenance and upkeep for the Capitol Complex.
- Specifies the DMS may not close or reopen access to any portion of the Capitol Complex used for legislative business without the President of the Senate and the Speaker of the House of Representatives approval.
- Requires the DMS to consult with the Governor, the President of the Senate, and the Speaker of the House of Representatives before closing or reopening access to any portion of the Capitol Complex to the public or certain employees during and after a declared state of emergency.

(WITH TITLE AMENDMENT)

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

521994

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/02/2022	.	
Floor: 1/AD/2R	.	
03/02/2022 10:18 AM	.	
	.	

The Committee on Appropriations (Albritton) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (2) of section 265.111, Florida Statutes, is amended to read:

265.111 Capitol Complex; monuments.—

(2) The construction and placement of a monument on the premises of the Capitol Complex, as defined in s. 281.01, is prohibited unless authorized by general law and unless the


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design and placement of the monument is approved, ~~by the Department of Management Services~~ after considering the recommendations of the Department of Management Services and the Florida Historical Commission, pursuant to s. 267.0612(9), by each of the following officers, or his or her designee:

(a) The Governor.

(b) The Attorney General.

(c) The Chief Financial Officer.

(d) The Commissioner of Agriculture.

(e) The President of the Senate.

(f) The Speaker of the House of Representatives.

The Department of Management Services shall coordinate with the Division of Historical Resources of the Department of State regarding a monument's design and placement subject to the division's powers and duties under s. 267.031.

Section 2. Subsection (9) of section 267.0612, Florida Statutes, is amended to read:

267.0612 Florida Historical Commission; creation; membership; powers and duties.—In order to enhance public participation and involvement in the preservation and protection of the state's historic and archaeological sites and properties, there is created within the Department of State the "Florida Historical Commission." The commission shall serve in an advisory capacity to the director of the Division of Historical Resources to assist the director in carrying out the purposes, duties, and responsibilities of the division, as specified in this chapter.

(9) The commission shall provide recommendations to the

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Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, the President of the Senate, and the Speaker of the House of Representatives ~~Department of Management Services~~ on the design and placement of monuments authorized by general law to be placed on the premises of the Capitol Complex pursuant to s. 265.111.

Section 3. Section 272.09, Florida Statutes, is amended to read:

272.09 Management, maintenance, and upkeep of Capitol Center.—

(1) For purposes of this section, the term "Capitol Complex" means the portion of the Capitol Center, commonly referred to as the Capitol, the Historic Capitol, the Senate Office Building, the House Office Building, the Knott Building, the Pepper Building, and the curtilage of each, including the state-owned lands and public streets adjacent thereto within an area bounded by and including Monroe Street, Jefferson Street, Duval Street, and Gaines Street.

(2) The management, maintenance, and upkeep of the Capitol Center as described ~~defined~~ in s. 272.03~~,~~ are hereby vested in and made the direct obligation of the Department of Management Services, which shall have authority to do all things necessary to satisfactorily accomplish these functions, including the employment of a superintendent of grounds and buildings and other employees; the establishment of central repair and maintenance shops; and the designation or appointment of nonsalaried advisory committees to advise with them.

(3) By December 1, 2022, and annually thereafter, the Department of Management Services shall submit to the Governor,

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the President of the Senate, and the Speaker of the House of Representatives a report detailing the maintenance and upkeep for the Capitol Complex. The report must identify, for the last completed fiscal year, the current fiscal year, and the upcoming fiscal year:

(a) The Capitol Complex maintenance and repairs completed or planned.

(b) Any necessary structural modifications, security improvements, and major repairs to the Capitol Complex.

(c) The costs or cost estimates for all items identified in paragraphs (a) and (b).

(d) The schedule for commencement and completion of the items identified in paragraphs (a) and (b).

(4)(a) In response to a state of emergency declared pursuant to s. 252.36, the Department of Management Services must consult with the Governor, the President of the Senate, and the Speaker of the House of Representatives before closing or reopening access to any portion of the Capitol Complex to the public or to the employees assigned to work in that portion of the Capitol Complex.

(b) The Department of Management Services may not close or reopen access to any portion of the Capitol Complex used for legislative business without the approval of the President of the Senate and the Speaker of the House of Representatives.

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

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

And the title is amended as follows:

Delete everything before the enacting clause

521994

and insert:

A bill to be entitled

An act relating to the Capitol Complex; amending s. 265.111, F.S.; prohibiting the construction and placement of a monument on the premises of the Capitol Complex unless the design and placement of such monument is approved by certain persons after considering the recommendations of certain entities; amending s. 267.0612, F.S.; revising the entities to which the Florida Historical Commission shall provide certain recommendations; amending s. 272.09, F.S.; defining the term "Capitol Complex"; requiring the Department of Management Services to annually submit a report detailing the maintenance and upkeep for the Capitol Complex to the Governor and the Legislature by a specified date; providing specifications for the report; requiring the Department of Management Services to consult with the Governor and the Legislature before closing and reopening areas within the Capitol Complex during a declared state of emergency; prohibiting the department from closing or reopening areas within the Capitol Complex used for legislative business without the approval of the Legislature; providing an effective date.

A bill to be entitled

An act relating to the Capitol Center; amending s. 265.111, F.S.; providing that certain facilities projects within the Capitol Complex must be developed in consultation with, and may not be implemented, changed, or amended unless approved by, certain persons; prohibiting the construction and placement of a monument on the premises of the Capitol Complex unless the design and placement of such monument is approved by certain persons after considering the recommendations of certain entities; amending s. 267.0612, F.S.; revising the entities to which the Florida Historical Commission shall provide certain recommendations; amending s. 272.04, F.S.; requiring the Department of Management Services to consult with the Governor, the President of the Senate, and the Speaker of the House of Representatives before closing and reopening buildings within the Capitol Center during a declared state of emergency; amending s. 272.09, F.S.; requiring the Department of Management Services to provide an annual maintenance and upkeep report; providing specifications for the report; providing an effective date.

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

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

FLORIDA HOUSE OF REPRESENTATIVES

HB 5301 2022

Section 1. Subsections (2) and (3) of section 265.111, Florida Statutes, are renumbered as subsections (3) and (4), respectively, present subsection (2) is amended, and new subsection (2) is added to that section, to read:

265.111 Capitol Complex; monuments.—

(2) A facilities project within the Capitol Complex, as defined in s. 281.01, which requires a change in the design or functional use of the Capitol Complex must be developed in consultation with, and may not be implemented, changed, or amended unless approved by, the following persons:

(a) The Governor, or his or her designee.

(b) The Attorney General, or his or her designee.

(c) The Chief Financial Officer, or his or her designee.

(d) The Commissioner of Agriculture, or his or her designee.

(e) The President of the Senate, or his or her designee.

(f) The Speaker of the House of Representatives, or his or her designee.

(3)~~(2)~~ The construction and placement of a monument on the premises of the Capitol Complex~~, as defined in s. 281.01,~~ is prohibited unless authorized by general law and unless the design and placement of the monument is approved, ~~by the Department of Management Services~~ after considering the recommendations of the Department of Management Services and the

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

hb5301-00

Florida Historical Commission~~,~~ pursuant to s. 267.0612(9), by the following persons:

(a) The Governor, or his or her designee.

(b) The Attorney General, or his or her designee.

(c) The Chief Financial Officer, or his or her designee.

(d) The Commissioner of Agriculture, or his or her designee.

(e) The President of the Senate, or his or her designee.

(f) The Speaker of the House of Representatives, or his or her designee.

The Department of Management Services shall coordinate with the Division of Historical Resources of the Department of State regarding a monument's design and placement subject to the division's powers and duties under s. 267.031.

Section 2. Subsection (9) of section 267.0612, Florida Statutes, is amended to read:

267.0612 Florida Historical Commission; creation; membership; powers and duties.—In order to enhance public participation and involvement in the preservation and protection of the state's historic and archaeological sites and properties, there is created within the Department of State the "Florida Historical Commission." The commission shall serve in an advisory capacity to the director of the Division of Historical Resources to assist the director in carrying out the purposes,

duties, and responsibilities of the division, as specified in this chapter.

(9) The commission shall provide recommendations to the Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, the President of the Senate, and the Speaker of the House of Representatives ~~Department of Management Services~~ on the design and placement of monuments authorized by general law to be placed on the premises of the Capitol Complex pursuant to s. 265.111.

Section 3. Section 272.04, Florida Statutes, is amended to read:

272.04 Department to allocate space; closing buildings.—

(1) The Department of Management Services shall have authority to allocate space to house the various departments, agencies, boards, and commissions in said buildings, excepting, however, the new Supreme Court Building, for which authority shall be vested in the justices of the Supreme Court.

(2) During a state of emergency declared pursuant to s. 252.36, the Department of Management Services must consult with the Governor, the President of the Senate, and the Speaker of the House of Representatives before closing buildings within the Capitol Center. If any buildings are closed within the Capitol Center, the department must consult with the Governor, the President of the Senate, and the Speaker of the House of Representatives before reopening the buildings.

Section 4. Section 272.09, Florida Statutes, is amended to read:

272.09 Management, maintenance, and upkeep of Capitol Center.—

(1) The management, maintenance, and upkeep of the Capitol Center as described ~~defined~~ in s. 272.03, are hereby vested in and made the direct obligation of the Department of Management Services, which shall have authority to do all things necessary to satisfactorily accomplish these functions, including the employment of a superintendent of grounds and buildings and other employees; the establishment of central repair and maintenance shops; and the designation or appointment of nonsalaried advisory committees to advise with them.

(2) By December 1, 2022, and annually thereafter, the Department of Management Services shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a Capitol Center maintenance and upkeep report. The report must describe the Capitol Center maintenance and repairs provided in the prior year and planned for the upcoming year and must include the costs of prior repairs and cost estimates for future repairs. The report should also describe any necessary structural modifications, security improvements, and major repairs to the buildings and grounds.

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

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

521994

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/02/2022	.	
Floor: 1/AD/2R	.	
03/02/2022 10:18 AM	.	
	.	

The Committee on Appropriations (Albritton) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (2) of section 265.111, Florida Statutes, is amended to read:

265.111 Capitol Complex; monuments.—

(2) The construction and placement of a monument on the premises of the Capitol Complex, as defined in s. 281.01, is prohibited unless authorized by general law and unless the


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design and placement of the monument is approved, ~~by the Department of Management Services~~ after considering the recommendations of the Department of Management Services and the Florida Historical Commission, pursuant to s. 267.0612(9), by each of the following officers, or his or her designee:

(a) The Governor.

(b) The Attorney General.

(c) The Chief Financial Officer.

(d) The Commissioner of Agriculture.

(e) The President of the Senate.

(f) The Speaker of the House of Representatives.

The Department of Management Services shall coordinate with the Division of Historical Resources of the Department of State regarding a monument's design and placement subject to the division's powers and duties under s. 267.031.

Section 2. Subsection (9) of section 267.0612, Florida Statutes, is amended to read:

267.0612 Florida Historical Commission; creation; membership; powers and duties.—In order to enhance public participation and involvement in the preservation and protection of the state's historic and archaeological sites and properties, there is created within the Department of State the "Florida Historical Commission." The commission shall serve in an advisory capacity to the director of the Division of Historical Resources to assist the director in carrying out the purposes, duties, and responsibilities of the division, as specified in this chapter.

(9) The commission shall provide recommendations to the

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Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, the President of the Senate, and the Speaker of the House of Representatives ~~Department of Management Services~~ on the design and placement of monuments authorized by general law to be placed on the premises of the Capitol Complex pursuant to s. 265.111.

Section 3. Section 272.09, Florida Statutes, is amended to read:

272.09 Management, maintenance, and upkeep of Capitol Center.—

(1) For purposes of this section, the term "Capitol Complex" means the portion of the Capitol Center, commonly referred to as the Capitol, the Historic Capitol, the Senate Office Building, the House Office Building, the Knott Building, the Pepper Building, and the curtilage of each, including the state-owned lands and public streets adjacent thereto within an area bounded by and including Monroe Street, Jefferson Street, Duval Street, and Gaines Street.

(2) The management, maintenance, and upkeep of the Capitol Center as described ~~defined~~ in s. 272.03~~,~~ are hereby vested in and made the direct obligation of the Department of Management Services, which shall have authority to do all things necessary to satisfactorily accomplish these functions, including the employment of a superintendent of grounds and buildings and other employees; the establishment of central repair and maintenance shops; and the designation or appointment of nonsalaried advisory committees to advise with them.

(3) By December 1, 2022, and annually thereafter, the Department of Management Services shall submit to the Governor,

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the President of the Senate, and the Speaker of the House of Representatives a report detailing the maintenance and upkeep for the Capitol Complex. The report must identify, for the last completed fiscal year, the current fiscal year, and the upcoming fiscal year:

(a) The Capitol Complex maintenance and repairs completed or planned.

(b) Any necessary structural modifications, security improvements, and major repairs to the Capitol Complex.

(c) The costs or cost estimates for all items identified in paragraphs (a) and (b).

(d) The schedule for commencement and completion of the items identified in paragraphs (a) and (b).

(4)(a) In response to a state of emergency declared pursuant to s. 252.36, the Department of Management Services must consult with the Governor, the President of the Senate, and the Speaker of the House of Representatives before closing or reopening access to any portion of the Capitol Complex to the public or to the employees assigned to work in that portion of the Capitol Complex.

(b) The Department of Management Services may not close or reopen access to any portion of the Capitol Complex used for legislative business without the approval of the President of the Senate and the Speaker of the House of Representatives.

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

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

And the title is amended as follows:

Delete everything before the enacting clause

521994

and insert:

A bill to be entitled

An act relating to the Capitol Complex; amending s. 265.111, F.S.; prohibiting the construction and placement of a monument on the premises of the Capitol Complex unless the design and placement of such monument is approved by certain persons after considering the recommendations of certain entities; amending s. 267.0612, F.S.; revising the entities to which the Florida Historical Commission shall provide certain recommendations; amending s. 272.09, F.S.; defining the term "Capitol Complex"; requiring the Department of Management Services to annually submit a report detailing the maintenance and upkeep for the Capitol Complex to the Governor and the Legislature by a specified date; providing specifications for the report; requiring the Department of Management Services to consult with the Governor and the Legislature before closing and reopening areas within the Capitol Complex during a declared state of emergency; prohibiting the department from closing or reopening areas within the Capitol Complex used for legislative business without the approval of the Legislature; providing an effective date.

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 Appropriations

BILL:	SB 7046
INTRODUCER:	Governmental Oversight and Accountability Committee
SUBJECT:	Public Employment
DATE:	February 25, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	McVaney	McVaney		**GO Submitted as Comm. Bill/Fav**
1.	Shettle	Sadberry	AP	**Favorable**

I. Summary:

SB 7046 establishes the contribution rates paid by employers participating in the Florida Retirement System (FRS) beginning July 1, 2022. These rates are intended to fund the full normal cost and the amortization of the unfunded actuarial liability of the FRS. With these modifications to employer contribution rates, the FRS Trust Fund will receive roughly $438 million more in revenue on an annual basis beginning July 1, 2022. The public employers that will incur these additional costs are state agencies, state universities and colleges, school districts, counties, municipalities, and other governmental entities that participate in the FRS.

The bill increases the amount of employer-paid contributions allocated to each active member's investment plan account by three percent of the member's compensation. The bill also extends the period that law enforcement officers may participate in the Deferred Option Retirement Program from 60 months to 96 months. To be eligible for this extended participation period, the law enforcement officer must be participating in DROP before July 1, 2028.

The bill requires the Department of Management Services (DMS) to conduct compensation surveys every ten years to determine the competitiveness of the State of Florida's compensation plan to the public and private employers in the state. The bill establishes survey methodology that must be included in the survey. The bill requires the DMS to provide a report of their results to the Governor and the presiding officers of the Legislature.

The bill will have a fiscal impact on state funds appropriated by the Legislature for employee benefits. The bill will increase the amounts, in the aggregate, employers participating in the FRS and the retiree health insurance subsidy program must pay for retiree benefits. See Section V.

The bill takes effect July 1, 2022.

II. Present Situation:

The Florida Retirement System (FRS)

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.[1] The FRS is a contributory system, with active members contributing three percent of their salaries.[2]

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in ch. 121, F.S. As of June 30, 2021, the FRS had 635,266 active members, 440,307 annuitants, 15,138 disabled retirees, and 31,655 active participants of the Deferred Retirement Option Program (DROP).[3] As of June 30, 2021, the FRS consisted of 985 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, Florida College institutions, and state universities, and includes the 179 cities and 151 special districts that have elected to join the system.[4]

The membership of the FRS is divided into five membership classes:

- The Regular Class[5] consists of 541,698 active members and 7,645 in renewed membership;
- The Special Risk Class[6] includes 74,355 active members and 1,163 in renewed membership;
- The Special Risk Administrative Support Class[7] has 98 active members and 1 in renewed membership;
- The Elected Officers' Class[8] has 2,095 active members and 110 in renewed membership; and
- The Senior Management Service Class[9] has 7,875 active members and 220 in renewed membership.[10]

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[1] Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2020-21 Annual Comprehensive Financial Report, at p. 35. Available online at: https://employer.frs.fl.gov/forms/2020-21_ACFR.pdf. (last visited February 8, 2022).

[2] Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011. Members in the Deferred Retirement Option Program do not contribute to the system.

[3] Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2020-21 Annual Comprehensive Financial Report, at p. 164.

[4] *Id.* at p. 200.

[5] The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

[6] The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

[7] The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

[8] The Elected Officers' Class includes elected state and county officers, and those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

[9] The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

[10] All figures are from Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2020-21 Annual Comprehensive Financial Report, at p. 167.

Each class is funded separately based upon the costs attributable to the members of that class.

Members of the FRS have two primary plan options available for participation:
- The defined contribution plan, also known as the Investment Plan; and
- The defined benefit plan, also known as the Pension Plan.

Investment Plan

In 2000, the Public Employee Optional Retirement Program (investment plan) was created as a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan. The State Board of Administration (SBA) is responsible for administering the investment plan.[11] The Board of Trustees of the SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.[12]

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and earnings. Benefits are provided through employee-directed investments offered by approved investment providers.

A member vests immediately in all employee contributions paid to the investment plan.[13] With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.[14] Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.[15] The investment plan also provides disability coverage for both in-line-of-duty and regular disability retirement benefits.[16] An FRS member who qualifies for disability while enrolled in the investment plan may apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.[17]

The table below shows the percentage of compensation deposited into individual investment accounts by membership class for members in the investment plan.[18]

[11] Section 121.4501(8), F.S.
[12] FLA CONST. art. IV, s. 4.
[13] Section 121.4501(6)(a), F.S.
[14] If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b)-(d), F.S.
[15] Section 121.591, F.S.
[16] *See* s. 121.4501(16), F.S.
[17] Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an in-line-of-duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. Section 121.091(4)(f), F.S.
[18] Section 121.72(5), F.S.

Membership Class	Percentage of Compensation*
Regular Class	6.3%
Special Risk Class	14.0%
Special Risk Admin. Support Class	7.95%
Elected Officers' Class	
State	9.38%
Justice and Judges	13.23%
Local	11.34%
Senior Management Service Class	7.67%

*Includes the three percent employee contribution

Pension Plan

The pension plan is administered by the Secretary of Management Services (DMS) through the Division of Retirement.[19] The SBA is responsible for the management of the pension fund assets.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.[20] For members initially enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.[21] Benefits payable under the pension plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation.[22] For most current members of the pension plan, normal retirement (when first eligible for unreduced benefits) occurs at the earliest attainment of 30 years of service or age 62.[23] For public safety employees in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.[24] Members initially enrolled in the pension plan on or after July 1, 2011, have longer service requirements. For members initially enrolled after that date, the member must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.[25]

Deferred Retirement Option Program

The Deferred Retirement Option Program (DROP)[26] allows an eligible member of the FRS pension plan to continue employment with an FRS-participating employer and defer receipt of retirement benefits. The deferred monthly benefits accrue, plus 1.3% annual interest, in the FRS on behalf of the member while the member participates in the DROP. Upon termination of employment, the member receives the accumulated DROP benefits and begins to receive the previously determined normal retirement benefit amounts.[27]

[19] Section 121.025, F.S.
[20] Section 121.021(45)(a), F.S.
[21] Section 121.021(45)(b), F.S.
[22] Section 121.091, F.S.
[23] Section 121.021(29)(a)1., F.S.
[24] Section 121.021(29)(b)1., F.S.
[25] Sections 121.021(29)(a)2. and (b)2., F.S.
[26] Section 121.091(13), F.S.
[27] Section 121.091(13)(a), F.S.

Eligible members may elect to participate in DROP for a period not to exceed a maximum of 60 consecutive calendar months.[28] However, instructional personnel employed by the Florida School for the Deaf and the Blind, instructional personnel in grades K-12, and personnel employed by a developmental research school may participate in DROP for up to 36 calendar months beyond the 60-month period.[29]

Optional Retirement Programs

Eligible employees may choose to participate in one of three retirement programs instead of participating in the FRS:

- Members of the Senior Management Service Class may elect to enroll in the Senior Management Service Optional Annuity Program;[30]
- Members in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program;[31] and
- Members in specified positions at a Florida College institution may elect to enroll in the State Community College System Optional Retirement Program.[32]

Contribution Rates

Employers participating in the FRS are required to contribute a specified percentage of the member's monthly compensation to the Division of Retirement to be distributed into the FRS Contributions Clearing Trust Fund. The employer contribution rate is a blended contribution rate set by statute, which is the same percentage regardless of whether the member participates in the pension plan or the investment plan.[33] The rate is determined annually based on an actuarial study by the DMS that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.

In the annual actuarial valuation of the Florida Retirement System based on July 1, 2021, plan assets and liabilities, Milliman, Inc., the state actuary, determined the following key data relating to the FRS pension plan:[34]

[28] Section 121.091(13)(b), F.S.
[29] Section 121.091(13)(b)1.a., F.S.
[30] The Senior Management Service Optional Annuity Program (SMSOAP) was established in 1986 for members of the Senior Management Service Class. Employees in eligible positions may irrevocably elect to participate in the SMSOAP rather than the FRS. Effective July 1, 2017, the SMSOAP is closed to new members. Section 121.055(6), F.S.
[31] Eligible participants of the State University System Optional Retirement Program (SUSORP) are automatically enrolled in the SUSORP. However, the member must execute a contract with a SUSORP provider within the first 90 days of employment or the employee will default into the pension plan. If the employee decides to remain in the SUSORP, the decision is irrevocable and the member must remain in the SUSORP as long as the member remains in a SUSORP-eligible position. Section 121.35, F.S.
[32] If the member is eligible for participation in a State Community College System Optional Retirement Program, the member must elect to participate in the program within 90 days of employment. Unlike the other optional programs, an employee who elects to participate in this optional retirement program has one opportunity to transfer to the FRS. Section 1012.875, F.S.
[33] Section 121.70(1), F.S.
[34] Florida Retirement System Pension Plan Actuarial Valuation as of July 1, 2021, at p. 3.

	Valuation Results (in $ billions)			
	July 1, 2018	**July 1, 2019**	**July 1, 2020**	**July 1, 2021**
Actuarial Liability	$186.0	$191.3	$200.3	$209.6
Actuarial Value of Assets	$156.1	$161.0	$164.3	$174.9
Unfunded Actuarial Liability	$29.9	$30.3	$36.0	$34.7
Funded Percentage (Actuarial Value of Assets/Actuarial Liability)	83.9%	84.2%	82.0%	83.4%

The state actuary determines a rate associated with the normal cost of the pension plan (funding the prospective benefits) and a rate necessary to amortize prior unfunded actuarial liabilities (UAL) over a thirty-year period and new tranches of unfunded actuarial liabilities over a twenty-year period. The following are the current employer contribution rates[35] for each class and the blended rates recommended by the state actuary beginning in July 2022:[36]

Membership Class	**Current Rates Effective July 1, 2021**		**Recommended Rates to be effective July 1, 2022**	
	Normal Cost	**UAL Rate**	**Normal Cost**	**UAL Rate**
Regular Class	4.91%	4.19%	5.16%	4.23%
Special Risk Class	15.27%	8.90%	15.91%	9.53%
Special Risk Administrative Support Class	9.73%	26.31%	9.91%	26.16%
Elected Officer's Class				
• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	8.49%	53.52%	8.34%	56.76%
• Justices and Judges	13.38%	25.81%	13.90%	27.64%
• County Officers	10.28%	39.42%	10.31%	43.98%
Senior Management Service Class	6.49%	20.80%	6.83%	22.15%
Deferred Retirement Option Program	7.23%	9.45%	7.77%	9.15%

For all membership classes, except the DROP and certain members with renewed membership, employees contribute three percent of their compensation towards retirement.[37]

After employer and employee contributions are placed into the FRS Contributions Clearing Trust Fund, the allocations under the investment plan are transferred to third-party administrators to be

[35] Section 121.71(4) and (5), F.S.
[36] Letter to Ms. Andrea Simpson, *Re: Blended Proposed Statutory Rates for the 2022-2023 Plan Year Reflecting a Uniform UAL Rate for All Membership Classes and DROP*, dated December 1, 2021 (on file with the Senate Committee on Governmental Oversight and Accountability).
[37] Section 121.71(3), F.S.

placed in the employee's individual investment accounts, whereas contributions under the pension plan are transferred into the FRS Trust Fund.[38]

Actuarial Special Studies

The state actuary has completed an actuarial study to determine the uniform blended employer rates for each membership class and subclass of the FRS necessary to fund the current normal cost and the amortization of the unfunded actuarial liabilities of the FRS and reflecting an increase of investment plan benefits by three percent of payroll. The table below shows the incremental increases by membership class and subclass associated with the investment plan benefit increases over the blended rates recommended by the state actuary based on the 2021 Actuarial Valuation.[39]

Membership Class	Increase in Blended Normal Cost Contribution Rate
Regular Class	0.80 %
Special Risk Class	0.44%
Special Risk Admin. Support Class	0.86%
Elected Officers' Class	
State	0.97%
Justice and Judges	0.51%
Local	0.99%
Senior Management Service Class	0.87%

The state actuary also has completed a special actuarial study on the recommended blended statutory rates for 2022-2023 reflecting the extension of the maximum length of DROP participation for law enforcement members by up to 36 months.[40] The study shows increases for the Special Risk Class by 0.09 percentage points in the normal cost contribution rate and 0.14 percentage points for the UAL contribution rate. An increase of 0.02 percentage points in the DROP rate is also necessary.

III. Effect of Proposed Changes:

Section 1 amends s. 110.2035, F.S., to require the Department of Management Services (DMS) to contract with a management consulting firm no later than September 1, 2022, and every ten years thereafter, to conduct a compensation survey of classes in the Career Service, Senior Management Service, and Selected Exempt Service. The goal of the survey is to determine the competitiveness of the state's compensation plan to competing employers in the state. The section requires the following survey methodology be included:

[38] *See* ss. 121.4503 and 121.72(1), F.S.
[39] Letter to Ms. Andrea Simpson, *Re: Projected Blended 2022-2023 Statutory Rates Reflecting 3.00% of Pay Increase in FRS Investment Plan Employer Contribution Rate*, dated December 5, 2021 (on file with the Senate Committee on Governmental Oversight and Accountability).
[40] Letter to Ms. Andrea Simpson, *Re: Extend Maximum DROP Participation by 36 Months for Law Enforcement Officer Members*, dated January 26, 2022 (on file with the Senate Committee on Governmental Oversight and Accountability).

- Geographical differentials in cost of living;
- Demand for labor; and
- Compensation plans of regional competitors.

The section requires the DMS to:
- Select at least 75 benchmark classes and ten high turnover classes that have at least 5 full-time equivalent positions for the Career Service Class survey; and
- Select at least 95 benchmark classes for the Senior Management Service and Selected Exempt Service Class survey.

The DMS must provide a report of the survey results to the Governor, President of the Senate, and Speaker of the House of Representatives.

Section 2 amends s. 121.091, F.S., to extend the maximum period of DROP participation for law enforcement members by 36 months. To be eligible for the extended period, the member must enter DROP by June 30, 2028.

Section 3 amends s. 121.71, F.S., to set the employer-paid contribution rates to the Florida Retirement System Trust Fund for each membership class and subclass of the FRS. The bill also updates the employer-paid contribution rates for each membership class to address the unfunded actuarial liabilities of the FRS.

Section 4 amends s. 121.72, F.S., to increase the amounts allocated to individual investment accounts by three percent of the member's compensation.

Section 5 provides findings that the bill fulfills an important state interest.

Section 6 provides an effective date of July 1, 2022

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides that: "No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: ...the expenditure is required to comply with a law that applies to all persons similarly situated…."

This bill includes legislative findings that the bill fulfills important state interests, and the bill applies to all persons similarly situated (those employers participating in the Florida Retirement System), including state agencies, school boards, state universities, community colleges, counties, municipalities, and special districts.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

This bill does not impose, authorize to impose, or raise a state tax or fee. Thus, the requirements of Art. III, s. 19 of the State Constitution are not applicable.

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 aggregate employer contributions anticipated to be paid into the Florida Retirement System Trust Fund in Fiscal Year 2022-2023 will increase by approximately $438 million when compared to the employer contributions paid in Fiscal Year 2021-2022. The impacts by employer group for Fiscal Year 2022-2023 are noted below.

Employer Group	Additional Contributions
State Agencies	$65.9 m
Universities	$31.3 m
Colleges	$12.6 m
School Boards	$156.3 m
Counties	$145.0 m
Other	$26.6 m
Total	$437.6 m

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 110.2035, 121.091, 121.071, and 121.072.

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 the Committee on Governmental Oversight and Accountability

585-02931-22 20227046__

A bill to be entitled

An act relating to public employment; amending s. 110.2035, F.S.; requiring the Department of Management Services to periodically contract for the completion of certain compensation surveys; specifying requirements for the methodology for such surveys; requiring the department to submit a report to the Governor and the legislative presiding officers upon completion of the surveys; amending s. 121.091, F.S.; authorizing Special Risk Class members who are law enforcement officers and meet certain criteria to participate in the deferred retirement option program for an additional time period; amending s. 121.71, F.S.; revising required employer retirement contribution rates for each membership class and subclass of the Florida Retirement System; amending s. 121.72, F.S.; revising allocations to investment plan member accounts; 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 (c) is added to subsection (6) of section 110.2035, Florida Statutes, to read:

110.2035 Classification and compensation program.—

(6) The department shall establish and maintain an equitable pay plan applicable to all occupations and be responsible for the overall review, coordination, and administration of the pay plan.

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

Florida Senate - 2022 **SB 7046**

585-02931-22 20227046__

(c)1. No later than September 1, 2022, and every 10 years thereafter, the department shall contract with a management consulting firm to conduct a compensation survey of positions in the Career Service System, the Senior Management Service Class, and Selected Exempt Service Class to determine the competitiveness of the state's compensation plan compared to competing employers in the state, including both public sector and private sector employers. The survey methodology must include the following:

a. Geographical differentials in cost of living;

b. Demand for labor; and

c. Compensation plans of regional competitors.

2. For the survey of positions in the Career Service System, the department shall select at least 75 benchmark classes and 10 high turnover classes that have at least 50 full-time equivalent positions.

3. For the survey of positions in the Senior Management Service Class and the Selected Exempt Service Class, the department shall select at least 95 benchmark classes.

4. Upon completion of the surveys required under this paragraph, the department shall provide a report detailing the results of the surveys to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 2. Paragraph (b) of subsection (13) of section 121.091, Florida Statutes, is amended to read:

121.091 Benefits payable under the system.—Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or begun participation in the Deferred Retirement Option Program as

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

provided in subsection (13), and a proper application has been filed in the manner prescribed by the department. The department may cancel an application for retirement benefits when the member or beneficiary fails to timely provide the information and documents required by this chapter and the department's rules. The department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application when the required information or documents are not received.

(13) DEFERRED RETIREMENT OPTION PROGRAM.—In general, and subject to this section, the Deferred Retirement Option Program, hereinafter referred to as DROP, is a program under which an eligible member of the Florida Retirement System may elect to participate, deferring receipt of retirement benefits while continuing employment with his or her Florida Retirement System employer. The deferred monthly benefits shall accrue in the Florida Retirement System on behalf of the member, plus interest compounded monthly, for the specified period of the DROP participation, as provided in paragraph (c). Upon termination of employment, the member shall receive the total DROP benefits and begin to receive the previously determined normal retirement benefits. Participation in the DROP does not guarantee employment for the specified period of DROP. Participation in DROP by an eligible member beyond the initial 60-month period as authorized in this subsection shall be on an annual contractual basis for all participants.

(b) *Participation in DROP.*—Except as provided in this paragraph, an eligible member may elect to participate in DROP for a period not to exceed a maximum of 60 calendar months.

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

1.a. ~~An eligible member may elect to participate in DROP for a period not to exceed a maximum of 60 calendar months. However,~~ Members who are instructional personnel employed by the Florida School for the Deaf and the Blind and authorized by the Board of Trustees of the Florida School for the Deaf and the Blind, who are instructional personnel as defined in s. 1012.01(2)(a)-(d) in grades K-12 and authorized by the district school superintendent, or who are instructional personnel as defined in s. 1012.01(2)(a) employed by a developmental research school and authorized by the school's director, or if the school has no director, by the school's principal, may participate in DROP for up to 36 calendar months beyond the 60-month period. Effective July 1, 2018, instructional personnel who are authorized to extend DROP participation beyond the 60-month period must have a termination date that is the last day of the last calendar month of the school year within the DROP extension granted by the employer. If, on July 1, 2018, the member's DROP participation has already been extended for the maximum 36 calendar months and the extension period concludes before the end of the school year, the member's DROP participation may be extended through the last day of the last calendar month of that school year. The employer shall notify the division of the change in termination date and the additional period of DROP participation for the affected instructional personnel.

b. Administrative personnel in grades K-12, as defined in s. 1012.01(3), who have a DROP termination date on or after July 1, 2018, may be authorized to extend DROP participation beyond the initial 60 calendar month period if the administrative personnel's termination date is before the end of the school

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

year. Such administrative personnel may have DROP participation extended until the last day of the last calendar month of the school year in which their original DROP termination date occurred if a date other than the last day of the last calendar month of the school year is designated. The employer shall notify the division of the change in termination date and the additional period of DROP participation for the affected administrative personnel.

c. Effective July 1, 2022, a member of the Special Risk Class who is a law enforcement officer who meets the criteria in s. 121.0515(3)(a) may participate in DROP for up to 36 calendar months beyond the 60-month period if he or she enters DROP on or before June 30, 2028.

2. Upon deciding to participate in DROP, the member shall submit, on forms required by the division:

a. A written election to participate in DROP;

b. Selection of DROP participation and termination dates that satisfy the limitations stated in paragraph (a) and subparagraph 1. The termination date must be in a binding letter of resignation to the employer establishing a deferred termination date. The member may change the termination date within the limitations of subparagraph 1., but only with the written approval of the employer;

c. A properly completed DROP application for service retirement as provided in this section; and

d. Any other information required by the division.

3. The DROP participant is a retiree under the Florida Retirement System for all purposes, except for paragraph (5)(f) and subsection (9) and ss. 112.3173, 112.363, 121.053, and

121.122. DROP participation is final and may not be canceled by the participant after the first payment is credited during the DROP participation period. However, participation in DROP does not alter the participant's employment status, and the member is not deemed retired from employment until his or her deferred resignation is effective and termination occurs as defined in s. 121.021.

4. Elected officers are eligible to participate in DROP subject to the following:

a. An elected officer who reaches normal retirement date during a term of office may defer the election to participate until the next succeeding term in that office. An elected officer who exercises this option may participate in DROP for up to 60 calendar months or no longer than the succeeding term of office, whichever is less.

b. An elected or a nonelected participant may run for a term of office while participating in DROP and, if elected, extend the DROP termination date accordingly; however, if such additional term of office exceeds the 60-month limitation established in subparagraph 1., and the officer does not resign from office within such 60-month limitation, the retirement and the participant's DROP is null and void as provided in sub-subparagraph (c)5.d.

c. An elected officer who is dually employed and elects to participate in DROP must terminate all employment relationships as provided in s. 121.021(39) for the nonelected position within the original 60-month period or maximum participation period as provided in subparagraph 1. For DROP participation ending:

(I) Before July 1, 2010, the officer may continue

employment as an elected officer as provided in s. 121.053. The elected officer shall be enrolled as a renewed member in the Elected Officers' Class or the Regular Class, as provided in ss. 121.053 and 121.122, on the first day of the month after termination of employment in the nonelected position and termination of DROP. Distribution of the DROP benefits shall be made as provided in paragraph (c).

(II) On or after July 1, 2010, the officer may continue employment as an elected officer but must defer termination as provided in s. 121.053.

Section 3. Subsections (4) and (5) of section 121.71, Florida Statutes, are amended to read:

121.71 Uniform rates; process; calculations; levy.—

(4) Required employer retirement contribution rates for each membership class and subclass of the Florida Retirement System for both retirement plans are as follows:

Membership Class	Percentage of Gross Compensation, Effective July 1, 2022 ~~2021~~
Regular Class	5.96% ~~4.91%~~
Special Risk Class	16.44% ~~15.27%~~

Special Risk Administrative Support Class	10.77% ~~9.73%~~
Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	9.31% ~~8.49%~~
Elected Officers' Class— Justices, Judges	14.41% ~~13.38%~~
Elected Officers' Class— County Elected Officers	11.30% ~~10.28%~~
Senior Management Service Class	7.70% ~~6.49%~~
DROP	7.79% ~~7.23%~~

(5) In order to address unfunded actuarial liabilities of the system, the required employer retirement contribution rates for each membership class and subclass of the Florida Retirement System for both retirement plans are as follows:

Membership Class	Percentage of Gross

	Compensation, Effective July 1, 2022 ~~2021~~
Regular Class	4.23% ~~4.19%~~
Special Risk Class	9.67% ~~8.90%~~
Special Risk Administrative Support Class	26.16% ~~26.31%~~
Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	56.76% ~~53.52%~~
Elected Officers' Class— Justices, Judges	27.64% ~~25.81%~~
Elected Officers' Class— County Elected Officers	43.98% ~~39.42%~~
Senior Management Service Class	22.15% ~~20.80%~~

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

DROP	9.15% ~~9.45%~~

Section 4. Subsection (5) of section 121.72, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

121.72 Allocations to investment plan member accounts; percentage amounts.—

(5) Effective July 1, 2012, through June 30, 2022, allocations from the Florida Retirement System Contributions Clearing Trust Fund to investment plan member accounts are as follows:

Membership Class	Percentage of Gross Compensation
Regular Class	6.30%
Special Risk Class	14.00%
Special Risk Administrative Support Class	7.95%
Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers,	9.38%

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

State Attorneys, Public Defenders	
Elected Officers' Class— Justices, Judges	13.23%
Elected Officers' Class— County Elected Officers	11.34%
Senior Management Service Class	7.67%

(6) Effective July 1, 2022, allocations from the Florida Retirement System Contributions Clearing Trust Fund to investment plan member accounts are as follows:

Membership Class	Percentage of Gross Compensation
Regular Class	9.30%
Special Risk Class	17.00%
Special Risk Administrative Support Class	10.95%
Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	12.38%

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

Elected Officers' Class— Justices, Judges	16.23%
Elected Officers' Class— County Elected Officers	14.34%
Senior Management Service Class	10.67%

Section 5. The Legislature finds that a proper and legitimate state purpose is served when employees, officers, and retirees of the state and its political subdivisions, and the dependents, survivors, and beneficiaries of such employees, officers, and retirees, are extended the basic protections afforded by governmental retirement systems. These persons must be provided benefits that are fair and adequate and that are managed, administered, and funded in an actuarially sound manner as required by s. 14, Article X of the State Constitution and part VII of chapter 112, Florida Statutes. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

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
Senate professional staff conducting the meeting

February 28, 2022
Meeting Date

Appropriations
Committee

SB 7046
Bill Number or Topic

Amendment Barcode (if applicable)

Name Matt Puckett

Phone

Address 300 East Brevard Street
Street

Email matt@flpba.org

Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida Police Benevolent 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 Appropriations

BILL:	PCS/CS/SB 160 (915896)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development), Transportation Committee and Senator Harrell
SUBJECT:	Transportation-related Facility Designations
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	**Fav/CS**
2.	McAuliffe	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	McAuliffe	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 160 creates the following honorary or memorial road and bridge designations:

- The portion of S.R. 715/Bacom Point Road between W. Morgan Road and S.W. 14th Street in Palm Beach County as "Deputy Sheriff Donta Manuel and Deputy Sheriff Jonathan Wallace Highway."
- The portion of S.R. 423/John Young Parkway between S.R. 408 and Orange Center Boulevard in Orange County as "Rep. Alzo Reddick Road."
- Bridge number 100850 on S.R. 60/Courtney Campbell Causeway over Old Tampa Bay in Hillsborough County as "Virginia Creighton Bridge."
- The intersection of S.W. 23rd Avenue and S.W. 8th Street in Miami-Dade County as "Arturo Diaz Artiles Plaza."
- The portion of W. Columbus Drive between N. Himes Avenue and N. MacDill Avenue in Hillsborough County as "Maximino Capdevila and Coralia Capdevila Road."
- The portion of S.R. 19 between C.R. 48 and Lane Park Cutoff Road in Lake County as "Sergeant First Class Michael C. Aten Memorial Highway."
- Bridge number 720684 on I-95 over the Trout River in Jacksonville/Duval County as "Warren Alvarez Memorial Bridge."
- The portion of U.S. 27/S.R. 25 between the Polk County line and the Glades County line in Highlands County as "Deputy William Gentry, Jr., Highway."

- The portion of S.R. 100 in Clay County between the Bradford County line and the Putnam County line as "Veterans Honor Highway."
- Upon completion of construction, the interchange at First Coast Expressway/S.R. 23 and Henley Road in Clay County as "Sergeant Eric John Twisdale Memorial Interchange."
- The portion of S.R. A1A between the northern terminus and southern terminus of Galt Ocean Drive in Broward County as "Pio Ieraci Memorial Drive."
- The portion of S.R. 520/W. King Street between S.R. 501/Clearlake Road and S.R. 519/Fiske Boulevard in Brevard County as "Sgt. George Lee Taylor, Sr., Memorial Highway."
- The portion of S.R. 519/Fiske Boulevard between Rosa L. Jones Drive and I-95 in Brevard County as "Dr. Martin Luther King, Jr., Boulevard."
- The portion of U.S. 90 between Canal Street and Stewart Street in Santa Rosa County as "Reverend Murray Hamilton, Sr., Highway."
- The portion of S.R. 87 between E. Bay Boulevard and U.S. 98 in Santa Rosa County as "Ira Mae Wells-Bruce Memorial Highway."
- The portion of Bayfront Parkway between Tarragona Street and N. 17th Avenue in Escambia County as "Pensacola Police Fallen Heroes Highway."
- The Cow Key Channel Bridge, bridge numbers 900086 and 900125, between milepost 4.100 and milepost 4.169 on Overseas Highway in Monroe County as "Cheryl H. Cates Memorial Bridge."
- The portion of S.R. 953/NW 42nd Avenue/Le Jeune Road from N.W. 11th Street to N.W. 14th Street in Miami-Dade County as "Oswaldo Payá Way."

The bill directs the Florida Department of Transportation (FDOT) to erect suitable markers.

The estimated cost to the FDOT to install the designation markers required under the bill is $18,720. See the "Fiscal Impact Statement" below for details.

The bill takes effect July 1, 2022.

II. Present Situation:

Section 334.071, F.S., provides that legislative designations of transportation facilities are for honorary or memorial purposes or to distinguish a particular facility. Such designations are not to be construed as requiring any action by local governments or private parties regarding the changing of any street signs, mailing addresses, or 911 emergency telephone number system listings, unless the legislation specifically provides for such changes.[1]

When the Legislature establishes road or bridge designations, the FDOT is required to place markers only at the termini specified for each highway segment or bridge designated by the law creating the designation and to erect any other markers it deems appropriate for the transportation facility.[2]

The FDOT may not erect the markers for honorary road or bridge designations unless the affected city or county commission enacts a resolution supporting the designation. When the

[1] Section 334.071(1), F.S.
[2] Section 334.071(2), F.S.

designated road or bridge segment is located in more than one city or county, each affected local government must pass resolutions supporting the designations before the installation of the markers.[3]

Deputy Sheriffs Donta Manuel and Jonathan Wallace

On November 28, 2007, as other deputies pursued a stolen vehicle that had just passed over "stop sticks" in the roadway on State Road 715 near Lake Okeechobee, Deputies Manuel and Wallace ran into the roadway in an attempt to remove the stop sticks. Apparently, due to the darkness, Deputies Manuel and Wallace did not perceive the speed at which the pursuing patrol cars were following behind the suspect vehicle. One of the pursuing patrol cars struck and killed both deputies. The driver of that pursuing patrol car was seriously injured and flown to a local hospital. One of the suspects in the stolen vehicle was apprehended a short time later.[4]

Deputy Manuel served with the Palm Beach County Sheriff's Office (PBCSO) for 13 years. He was survived by his wife, Suzette Manuel, sons Donta and Diontray Manuel, and daughter Dashja Trawick. Deputy Wallace served with the PBSCO for 18 months. He was survived by his mother, Patricia Wallace.[5]

Representative Alzo Reddick

Dr. Alzo J. Reddick, Sr., was born in Alturas, Florida, on November 15, 1937. He graduated from Jones High School in 1956. After earning his Bachelor of Science degree from Paul Quinn University in 1960, he served in the U.S. Army from 1961 to 1964 and returned home to teach at Phyllis Wheatley and Winter Park High Schools. Dr. Reddick earned a Master of Education degree from FAMU in 1971 and a Doctorate of Education from Nova University in 1977.[6]

Dr. Reddick was the first black man from Orlando to be elected to the state legislature since the Reconstruction Era and to sponsor legislation that became law. Known for his community service and a lifetime of accomplishments in education and politics, Dr. Reddick served in the Florida House of Representatives from 1982 to 2000.[7]

Virginia Creighton

Virginia Creighton worked in the field of wetland science and regulation for almost three decades, with a combination of government policy, regulatory, and environmental consulting experience. Ms. Creighton was a certified Professional Wetland Scientist and specialized in

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[3] Section 334.071(3), F.S.
[4] *See* the SunSentinel, *Stop Sticks help put the brakes on escaping criminals*, May 25, 2013, available at http://www.sun-sentinel.com/news/fl-xpm-2013-05-25-fl-stop-stick-20130525-story.html and the Palm Beach County Sheriff's Office, *Fallen Heroes*, available at https://www.pbso.org/inside-pbso/general/fallen-heroes/ (last visited January 30, 2022).
[5] *Id*.
[6] *See* Community Steeple, *Community Builder – Dr. Alzo J. Reddick, Sr.,* August 9, 2015available at https://www.communitysteeple.com/lifestyles-people/692-community-builder-dr-alzo-j-reddick-sr.html and the Orlando Sentinel, *Former state Rep. Alzo Reddick honored for historic career in education, politics*, July 8, 2021, available at https://www.orlandosentinel.com/news/os-ne-alzo-reddick-honored-20210708-f3hzsk7hmzabhfud34ummgrcfm-story.html (last visited January 30, 2022).
[7] *Id*.

formal jurisdictional determinations and wetland qualitative analyses. She acted as an environmental project manager on multiple FDOT and local-level projects, as well as for private developments, including small and large-scale developments of regional impact. She was directly involved in obtaining environmental resource permits for over fifty transportation projects. Ms. Creighton was essential to development of the Courtney Campbell Causeway – Old Tampa Bay Water Quality Improvement project, and she received an award for the Best Project in Florida from the FDOT in 2018. Ms. Creighton passed away on May 29, 2020, survived by her husband and two sons.[8]

Arturo Diaz Artiles

Arturo Diaz Artiles was a Cuban exile, born in Santa Clara Cuba in 1920 and immigrating to the City of Miami in 1962. In 1965, he opened the Santa Clara Pharmacy at the corner of Southwest 23rd Avenue and Southwest 8th Street in Miami, only the second Cuban-owned pharmacy in the city at the time. Mr. Artiles' pharmacy filled prescriptions, but it served as an important community gathering location for Cuban exiles, especially the elderly. Mr. Artiles operated the pharmacy for nearly 50 years until 2004. During that time, he also received the United Way of Miami-Dade County Gold award for 30 years of service to his community, the Latin Real Estate Organization Board of Directors Award, and the City of Miami's Certification of Appreciation. A founding member of the Latin Chamber of Commerce, the Miami-Dade County Commission issued a proclamation declaring February 25 as Arturo "Arturito" Diaz Artiles Day and presented him with a key to the county. Mr. Artiles passed away on November 11, 2013. He was survived by his three children, Arturo Diaz, Jr., Ana Cepero, and Aixa Schulte.[9]

Maximino Capdevila and Coralia Capdevila Road

In 1962, the Capdevila family emigrated from Cuba on Freedom Flights to Miami, settling in Tampa with their four boys. Mr. and Mrs. Capdevila opened their first business, La Teresita Grocery, in 1972, eventually expanding their efforts and finding success. Ultimately, in 1993, the Capdevilas opened a 14,000 square foot, two story building, La Teresita, housing a sit-down restaurant, a cafeteria, and a banquet hall. La Teresita continues in operation today, known for its service to the community and to people and cultures from all walks of life. Mr. Capdevila passed away on December 26, 2010, at the age of 82, survived by his wife, Coralia, two sons, grandchildren, great grandchildren, and extended family and friends.[10]

Sergeant First Class Michael C. Aten Memorial Highway

Born and raised in Eustis, Florida, and a graduate of Mount Dora High School, Sergeant First Class Michael C. "Soldier Mike" Aten served in the U.S. Army, became an Army Ranger, and served his county for 26 years. During his service, Sergeant Aten earned numerous military

[8] *See* email to Senate Transportation Committee staff, December 7, 2020 (on file in the Senate Transportation Committee). *See also* Legacy, *Virginia A. "Ginger" (Sinn) Creighton*, available at https://www.legacy.com/us/obituaries/staugustine/name/virginia-creighton-obituary?pid=196324025 (last visited January 30, 2021).
[9] *See* the City of Miami Resolution R-21-0059, February 11, 2021 (on file in the Senate Transportation Committee), *See also* letter from the children of Arturo Diaz Artiles, January 20, 2021 (on file in the Senate Transportation Committee).
[10] *See* Legacy.com, *Maximino Capdevila*, available at https://www.legacy.com/obituaries/tbo/obituary.aspx?pid=147472539 and LaTeresita, *Our Story*, available at https://www.lateresitarestaurant.com/the-story (last visited January 30, 2022).

awards, among them, the Bronze Star while serving in Iraq; the Army Commendation Medal with Combat "V," denoting battlefield valor; the Armed Forces Expeditionary Medal; and the Global War on Terrorism Service Medal. He was active in community service and had a love for motorcycle riding. Sergeant Aten lost his life in a motorcycle accident on January 3, 2020, at the age of 54, and was survived by his wife, Diana, his parents, his step-father, and his extended family and friends.[11]

Warren Alvarez

Former two-term Jacksonville City Council member Warren Alvarez was a native and lifelong resident of Jacksonville's Northside and lived all of his life on his family's dairy farm. He was active in agricultural and civic organizations and activities, serving on many boards, commissions, and organization at the county and state levels. Known for his advocacy for his constituents, Mr. Alvarez worked successfully to have Interstate 95 widened as it crosses the Trout River Bridge. Among many other community contributions, he was a founding member of EDEN (Economic Development and Enhancement of North Jacksonville), a member of the Northside Business Leaders Club, and a board member of the Jacksonville Zoo, the Jacksonville Fair Association, Methodist Hospice, the Duval County Cattlemen's Association, and Upper Florida Milk Producers. Mr. Alvarez passed away on March 6, 2021, at the age of 86. He was survived by his wife of 67 years, Mary; two daughters, two grandsons, a great granddaughter, three brothers, and a number of extended family and friends.[12]

Deputy William Gentry, Jr.

Deputy Gentry grew up in Fort Myers, joining the Highlands County Sheriff's Office (HCSO) in March of 2005 and joined the K-9 Unit as soon as he could. For four years, he and his K-9 partner, Roni, patrolled the county. When Roni retired from service in 2012, Deputy Gentry transferred back to road patrol and then to the Special Investigations Unit, targeting illegal drugs until 2013. After a brief period of time using his talents as an artist and woodworker to make custom pool cues, Deputy Gentry returned to the HCSO in 2017, becoming a field training deputy and mentoring young deputies beginning their law enforcement careers. Responding to an animal abuse call with a trainee, Deputy Gentry was shot by a 69 year-old suspect and succumbed to his wounds on May 7, 2018. He was survived by his parents, his younger brother, and his beloved dogs.[13]

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[11] *See* the Daily Commercial, *Taps for Sgt. 1st Class "Soldier Mike" Aten,* January 11, 2020, available at https://www.dailycommercial.com/story/news/local/2020/01/11/taps-for-sgt-lst-class-soldier-mike-aten/1918137007/; Minutes of the December 8, 2020, Regular Meeting of the Board of County Commissioners of Lake County, at "*Tab 3: PROCLAMATION 2020-215*," available at https://www.lakecountyclerk.org/forms/board_minutes/2020/12/2020-12-08_Regular_Meeting.htm; and Echovita, *Michael C. Aten Obituary*, available at https://www.echovita.com/us/obituaries/fl/umatilla/michael-c-aten-10215591 (last visited January 30, 2022).

[12] *See* Jacksonville City Council Resolution 2021-267-A, April 28, 2021 (on file in the Senate Transportation Committee) and Legacy.com, *Warren Alvarez*, available at https://www.legacy.com/us/obituaries/timesunion/name/warren-alvarez-obituary?id=6685153 (last visited January 30, 2022).

[13] *See* Officer Down Memorial Page, *Deputy Sheriff William Jackson Gentry, Jr.*, available at https://www.odmp.org/officer/23672-deputy-sheriff-william-jackson-gentry-jr and Legacy.com, *William J Gentry, Jr.*, available at https://www.legacy.com/obituaries/name/william-gentry-jr-obituary?pid=188976004 (last visited January 30, 2022).

Florida's Veterans

The Florida Department of Veterans Affairs notes that:

> Florida has earned a reputation as the most veteran-friendly state in the nation. Our state's veterans bring more than $18.4 billion federal dollars annually into Florida's economy.
>
> Florida has the third largest population of veterans in the nation after California and Texas with more than 1.5 million veterans – 12 percent of the Sunshine State's population 18 and over.[14]

The bill honors Florida's veterans in Clay County and throughout the state.

Sergeant Eric John Twisdale

Sergeant Twisdale served with the Clay County Sheriff's Office for 22 years, having previously served with the Jacksonville Sheriff's Office. One of thousands of law enforcement officers and other first responders throughout the county who contracted COVID-19 while selflessly serving the public, Sergeant Twisdale passed away on August 16, 2020, at the age of 49, after contracting the infection, presumably from exposure at the Sheriff's Office. Sergeant Twisdale was survived by his children, Katie, Thomas, and Stephanie; his grandchildren, Cain, Declan, Finola, Jameson, and Autumn (with a sixth grandchild on the way at the time of his death); his brothers, Norman and Tim; his sister, Debbie; and several aunts, uncles, nieces, nephews, and cousins.[15]

Pio Ieraci

Pio Ieraci was born in Windsor, Ontario, Canada and lived in Florida for over 30 years, finding professional success and becoming an active civic leader in Broward County. He was appointed to the City of Fort Lauderdale Education Advisory Board, served as the Chairman of the South Florida Business Advisors, Inc., and of the Broward Beach Coalition, and was instrumental in beach renourishment efforts. He also served as Chairman of the President's Council and the Galt Mile Community Association, and served the President of the Galt Ocean Club Condominium Association for over 20 years. Mr. Ieraci passed away at the age of 58 and was survived by his mother, Marcy; his wife, Lisa; his son and daughter, Daniel and Alessia, and other extended family and friends.[16]

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[14] *See* the Florida Department of Veterans' Affairs (FDVA), *Our Veterans*, available at https://floridavets.org/our-veterans/ (last visited January 30, 2022).
[15] *See* Officer Down Memorial Page, *Sergeant Eric John Twisdale*, available at https://www.odmp.org/officer/24909-sergeant-eric-john-twisdale and Dignity Memorial, *Sgt. Eric John Twisdale*, available at https://www.dignitymemorial.com/obituaries/jacksonville-fl/eric-twisdale-9368207 (last visited January 30, 2022).
[16] *See* Dignity Memorial, *Pio Richard Ieraci Obituary*, available at https://www.dignitymemorial.com/obituaries/fort-lauderdale-fl/pio-ieraci-9961464 (last visited January 30, 2022).

Sgt. George Lee Taylor, Sr.

George Lee Taylor, Sr., was born in Oak Hill, West Virginia, in 1950 and moved to Florida around 1960. He served in the U.S. Army after high school, from 1967 to 1971, as a Paratrooper with the 173rd Airborne Brigade during the Vietnam War. He served honorably, earning a Purple Heart, Bronze Star, and Combat Infantry Badge. After returning home, he worked tirelessly to address the needs of veterans, with a specific focus on finding homeless camps and the homeless veterans in them to help veterans get the care and housing they deserve. He founded National Veterans Homeless Support in 2008 and he is said to have helped to reduce the homeless veteran population in Brevard County by 90 percent. Mr. Taylor passed away on May 17, 2020, at the age of 70. He was survived by his wife, Jan; two sons, three daughters, three brothers, three sisters, and ten grandchildren.[17]

Dr. Martin Luther King, Jr.

Dr. King was a Baptist minister and social activist who led the civil rights movement in the United States from the mid-1950s until his death by assassination in 1968. His leadership led to the ending legal segregation in the south and other parts of the United States. He rose to national prominence as head of the Southern Christian Leadership Conference, promoting nonviolent efforts to achieve civil rights. He was awarded the Nobel Peace Prize in 1964.[18]

Reverend Murray Hamilton, Sr., Highway

Recognized for his many contributions and numerous achievements for the benefit of Santa Rosa County, Murray Hamilton, Sr., was the owner of H&H BBQ and was a reverend for eight years. He contributed his time for positive community action to the following organizations: The Democratic Black Caucus, the NAACP, Men with Visions, and the Lions Club. He served as Chair of the MLK Committee, which developed the annual MLK prayer breakfast and parade. He was also a founding member of "The Over the Hill Gang," which sponsored basketball tournaments and activities for youth and of "Citizens Moving Forward." Reverend Hamilton passed away on January 25, 2021.[19]

Ira Mae Wells-Bruce

Born in Pensacola, Ira Mae Wells-Bruce was Santa Rosa County's first female commissioner and the first female to serve as president of the board of directors for a local bank. She was known as a pioneer business, community, and political leader who contributed to the development and growth of Holley Navarre and Santa Rosa County. She operated Century 21 Island View Realty with her business partners for more than 40 years. She was a member of

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[17] *See* Legacy, *George Taylor, Sr.*, available at https://www.legacy.com/us/obituaries/floridatoday/name/george-taylor-obituary?pid=196267261 (last visited January 30, 2022).
[18] Britannica, *Martin Luther King, Jr.*, available at https://www.britannica.com/biography/Martin-Luther-King-Jr (last visited January 30, 2022).
[19] *See* Minutes of the April 13, 2021, Regular Meeting of the Board of County Commissioners of Santa Rosa County, available at https://santarosacofl.civicclerk.com/Web/Dialogs/AIDocs.aspx?id=427 (scroll down to "7) Administrative Committee" and click on "After Action – Executed Resolution – Murray Hamilton"); and Legacy.com, *Rev. Murray Hamilton Sr.*, available at https://www.legacy.com/us/obituaries/pensacolanewsjournal/name/murray-hamilton-obituary?id=7279692 (last visited January 30, 2022).

many civic, community, and business boards. Ms. Wells-Bruce passed away on December 1, 2020, survived by her husband, Gaius Bruce, three children, three grandchildren, three great grandchildren, and extended family and friends.[20]

Fallen Pensacola Police Officers

From 1889 through 1997, the Pensacola Police Department lost 14 officers while serving their community: Police Officers John William Robert Gordon, John Yelverton, William B. Burnham, J.D. Carter, Herbert Hatcher, Edward O-Brien Pursell, Louis J. Champa, Curtis Neal Jones, Amos Cross, and Stephen A. Taylor; Motorcycle Officer C.F. Bazzell; Officers Clinton A. Green and Glenn Rowe Austraw; and Detective Archie Bowman.[21]

Cheryl H. Cates

Cheryl Cates, the former First Lady of Key West, was a service-driven member of her community who enjoyed encouraging and supporting local nonprofits, with a special interest in children and families. Ms. Cates was a member of the Key West Woman's Club for 32 years and served the Zonta Club of Key West[22] for a decade, from which she received the Community Service Award of Excellence in 2012. She also served on the board of directors for Kids Come First and Wesley House Family Services, was vice president of Samuel's House[23] executive board, and was a member of the Key West Mystic Krewe. Among the many honors for her service to the community, Ms. Cates received the Key West Business Guild's Presidential Award in 2017 and the Key West Star Award from the Chamber of Commerce in 2016. Ms. Cates passed away on December 2, 2020, and was survived by her husband, five-term Mayor Craig Cates, as well as her three daughters, grandchildren, and other extended family.[24]

Oswaldo Payá

A father, a political activist, and the founder of the Christian Liberation Movement, Oswaldo Payá was one of the first outspoken opposition members in Cuba. He was the primary organizer of the Valera Project, advocating for democratic political reforms within Cuba.[25] Mr. Payá was admired by many for his selfless dedication to protecting human rights, opposing Cuba's one-party rule, and fighting for core human and political rights. Among his many recognitions, Mr. Payá received the Sakharov Prize for Freedom of Thought from the European Parliament in

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[20] *See* Navarre Press, *Celebration of life to be held for Ira Mae Bruce*, May 1, 2021, available at https://navarrepress.com/celebration-of-life-to-be-held-for-ira-mae-bruce/ (last visited January 30, 2022).
[21] Officer Down Memorial Page, *Pensacola Police Department*, available at https://www.odmp.org/agency/3078-pensacola-police-department-florida (last visited February 14, 2022).
[22] Zonta is an organization of "women helping women," that provides, for example, scholarship awards to local high school girls and women, and a Heart Health Initiative that donates funds to women in the community for comprehensive screenings. *See* Zonta Club of Key West, *Community Service Projects*, available at http://www.zontakeywest.com/zonta-key-west-services (last visited February 14, 2022).
[23] Samuel's House provides emergency shelter to women and children. Samuelshouse.org, available at https://samuelshouse.org/ (last visited February 14, 2022).
[24] *See* keysnews.com, *Cheryl Cates*, December 16, 2020, available at https://www.keysnews.com/obituaries/cheryl-cates/article_df65f596-3bd8-11eb-9c52-f723c2127e1f.html (last visited February 14, 2022).
[25] *See* Wikipedia, *Varela Project*, available at https://en.wikipedia.org/wiki/Varela_Project (last visited February 15, 2022).

2002. On July 22, 2012, in an incident many believe to have been orchestrated by the Cuban regime, Mr. Payá died in a car accident.[26]

III. Effect of Proposed Changes:

The bill creates the following honorary or memorial road and bridge designations:

- The portion of S.R. 715/Bacom Point Road between W. Morgan Road and S.W. 14th Street in Palm Beach County as "Deputy Sheriff Donta Manuel and Deputy Sheriff Jonathan Wallace Highway."
- The portion of S.R. 423/John Young Parkway between S.R. 408 and Orange Center Boulevard in Orange County as "Rep. Alzo Reddick Road."
- Bridge number 100850 on S.R. 60/Courtney Campbell Causeway over Old Tampa Bay in Hillsborough County as "Virginia Creighton Bridge."
- The intersection of S.W. 23rd Avenue and S.W. 8th Street in Miami-Dade County as "Arturo Diaz Artiles Plaza."
- The portion of W. Columbus Drive between N. Himes Avenue and N. MacDill Avenue in Hillsborough County as "Maximino Capdevila and Coralia Capdevila Road."
- The portion of S.R. 19 between C.R. 48 and Lane Park Cutoff Road in Lake County as "Sergeant First Class Michael C. Aten Memorial Highway."
- Bridge number 720684 on I-95 over the Trout River in Jacksonville/Duval County as "Warren Alvarez Memorial Bridge."
- The portion of U.S. 27/S.R. 25 between the Polk County line and the Glades County line in Highlands County as "Deputy William Gentry, Jr., Highway."
- The portion of S.R. 100 in Clay County between the Bradford County line and the Putnam County line as "Veterans Honor Highway."
- Upon completion of construction, the interchange at First Coast Expressway/S.R. 23 and Henley Road in Clay County as "Sergeant Eric John Twisdale Memorial Interchange."
- The portion of S.R. A1A between the northern terminus and southern terminus of Galt Ocean Drive in Broward County as "Pio Ieraci Memorial Drive."
- The portion of S.R. 520/W. King Street between S.R. 501/Clearlake Road and S.R. 519/Fiske Boulevard in Brevard County as "Sgt. George Lee Taylor, Sr., Memorial Highway."
- The portion of S.R. 519/Fiske Boulevard between Rosa L. Jones Drive and I-95 in Brevard County as "Dr. Martin Luther King, Jr., Boulevard."
- The portion of U.S. 90 between Canal Street and Stewart Street in Santa Rosa County as "Reverend Murray Hamilton, Sr., Highway."
- The portion of S.R. 87 between E. Bay Boulevard and U.S. 98 in Santa Rosa County as "Ira Mae Wells-Bruce Memorial Highway."
- The portion of Bayfront Parkway between Tarragona Street and N. 17th Avenue in Escambia County as "Pensacola Police Fallen Heroes Highway."
- The Cow Key Channel Bridge, bridge numbers 900086 and 900125, between milepost 4.100 and milepost 4.169 on Overseas Highway in Monroe County as "Cheryl H. Cates Memorial Bridge."

[26] *See* International Republican Institute, *Remembering Oswaldo Payá*: *The Legacy of a Cuban Visionary*, July 21, 2020, available at https://www.iri.org/news/remembering-oswaldo-paya-the-legacy-of-a-cuban-visionary/, and *see also* legacy.com, Bennington Banner, *Oswaldo Payá*, available at https://www.legacy.com/us/obituaries/bennington/name/oswaldo-paya-obituary?pid=158710173 (both sites last visited February 15, 2022).

- The portion of S.R. 953/NW 42nd Avenue/Le Jeune Road from N.W. 11th Street to N.W. 14th Street in Miami-Dade County as "Oswaldo Payá Way."

The bill directs the FDOT to erect suitable markers.

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:

The estimated cost to erect the designation markers required under this bill is $18,720, based on the assumption that a minimum of two markers are required for each designation at a cost to the FDOT of no less than $520 each. The estimate includes sign fabrication, installation, and maintenance over time but does not include any additional expenses related to maintenance of traffic, dedication event costs, or replacement necessitated by damage, vandalism, or storm events. The FDOT is expected to absorb the estimated cost within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates an undesignated section of Florida law.

IX. Additional Information:

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

PCS (915896) by Appropriations Committee (Recommended by Subcommittee on Transportation, Tourism, and Economic Development):
The committee substitute adds the following designations to the bill:

- "Pensacola Police Fallen Heroes Highway" in Escambia County.
- "Cheryl H. Cates Memorial Bridge" in Monroe County.
- "Oswaldo Payá Way" in Miami-Dade County.

CS by the Transportation Committee on January 25, 2022:
The committee substitute adds the following designations to the bill:

- "Rep. Alzo Reddick Road" in Orange County.
- "Virginia Creighton Bridge" in Hillsborough County.
- "Arturo Diaz Artiles Plaza" in Miami-Dade County.
- "Maximino Capdevila and Coralia Capdevila Road" in Hillsborough County.
- "Sergeant First Class Michael C. Aten Memorial Highway" in Lake County.
- "Warren Alvarez Memorial Bridge" in Jacksonville/Duval County.
- "Deputy William J. Gentry, Jr. Highway in Clay County.
- "Veterans Honor Highway" in Clay County.
- "Sergeant Eric John Twisdale Memorial Interchange" in Clay County.
- "Pio Ieraci Memorial Drive" in Broward County.
- "Sgt. George Lee Taylor, Sr., Memorial Highway" in Brevard County.
- "Dr. Martin Luther King, Jr., Boulevard in Brevard County.
- "Reverend Murray Hamilton, Sr., Highway" in Santa Rosa County.

B. "Ira Mae Wells-Bruce Memorial Highway in Santa Rosa County.Amendments:

None.

915896

576-03088-22

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Transportation, Tourism, and Economic Development)

A bill to be entitled

An act relating to transportation-related facility designations; providing honorary designations of certain transportation facilities in specified counties; directing the Department of Transportation to erect suitable markers; providing an effective date.

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

Section 1. Transportation facility designations; Department of Transportation to erect suitable markers.—

(1) That portion of S.R. 715/Bacom Point Road between W. Morgan Road and S.W. 14th Street in Palm Beach County is designated as "Deputy Sheriff Donta Manuel and Deputy Sheriff Jonathan Wallace Highway."

(2) That portion of S.R. 423/John Young Parkway between S.R. 408 and Orange Center Boulevard in Orange County is designated as "Rep. Alzo Reddick Road."

(3) Bridge number 100850 on S.R. 60/Courtney Campbell Causeway over Old Tampa Bay in Hillsborough County is designated as "Virginia Creighton Bridge."

(4) The intersection of S.W. 23rd Avenue and S.W. 8th Street in Miami-Dade County is designated as "Arturo Diaz Artiles Plaza."

(5) That portion of W. Columbus Drive between N. Himes

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576-03088-22

Avenue and N. MacDill Avenue in Hillsborough County is designated as "Maximino Capdevila and Coralia Capdevila Road."

(6) That portion of S.R. 19 between C.R. 48 and Lane Park Cutoff Road in Lake County is designated as "Sergeant First Class Michael C. Aten Memorial Highway."

(7) Bridge number 720684 on I-95 over the Trout River in Jacksonville/Duval County is designated as "Warren Alvarez Memorial Bridge."

(8) That portion of U.S. 27/S.R. 25 between the Polk County line and the Glades County line in Highlands County is designated as "Deputy William Gentry, Jr., Highway."

(9) That portion of S.R. 100 in Clay County between the Bradford County line and the Putnam County line is designated as "Veterans Honor Highway."

(10) Upon completion of construction, the interchange at First Coast Expressway/S.R. 23 and Henley Road in Clay County is designated as "Sergeant Eric John Twisdale Memorial Interchange."

(11) That portion of S.R. A1A between the northern terminus and southern terminus of Galt Ocean Drive in Broward County is designated as "Pio Ieraci Memorial Drive."

(12) That portion of S.R. 520/W. King Street between S.R. 501/Clearlake Road and S.R. 519/Fiske Boulevard in Brevard County is designated as "Sgt. George Lee Taylor, Sr., Memorial Highway."

(13) That portion of S.R. 519/Fiske Boulevard between Rosa L. Jones Drive and I-95 in Brevard County is designated as "Dr. Martin Luther King, Jr., Boulevard."

(14) That portion of U.S. 90 between Canal Street and

Stewart Street in Santa Rosa County is designated as "Reverend Murray Hamilton, Sr., Highway."

(15) That portion of S.R. 87 between E. Bay Boulevard and U.S. 98 in Santa Rosa County is designated as "Ira Mae Wells-Bruce Memorial Highway."

(16) That portion of Bayfront Parkway between Tarragona Street and N. 17th Avenue in Escambia County is designated as "Pensacola Police Fallen Heroes Highway."

(17) The Cow Key Channel Bridge, bridge numbers 900086 and 900125, between milepost 4.100 and milepost 4.169 on Overseas Highway in Monroe County is designated as "Cheryl H. Cates Memorial Bridge."

(18) That portion of S.R. 953/NW 42nd Avenue/Le Jeune Road between N.W. 11th Street and N.W. 14th Street in Miami-Dade County is designated as "Oswaldo Payá Way."

(19) The Department of Transportation is directed to erect suitable markers designating the transportation facilities as described in this section.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 160
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Harrell
SUBJECT:	Transportation-related Facility Designations
DATE:	March 1, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	**Fav/CS**
2.	McAuliffe	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	McAuliffe	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 160 creates the following honorary or memorial road and bridge designations:

- The portion of S.R. 715/Bacom Point Road between W. Morgan Road and S.W. 14th Street in Palm Beach County as "Deputy Sheriff Donta Manuel and Deputy Sheriff Jonathan Wallace Highway."
- The portion of S.R. 423/John Young Parkway between S.R. 408 and Orange Center Boulevard in Orange County as "Rep. Alzo Reddick Road."
- Bridge number 100850 on S.R. 60/Courtney Campbell Causeway over Old Tampa Bay in Hillsborough County as "Virginia Creighton Bridge."
- The intersection of S.W. 23rd Avenue and S.W. 8th Street in Miami-Dade County as "Arturo Diaz Artiles Plaza."
- The portion of W. Columbus Drive between N. Himes Avenue and N. MacDill Avenue in Hillsborough County as "Maximino Capdevila and Coralia Capdevila Road."
- The portion of S.R. 19 between C.R. 48 and Lane Park Cutoff Road in Lake County as "Sergeant First Class Michael C. Aten Memorial Highway."
- Bridge number 720684 on I-95 over the Trout River in Jacksonville/Duval County as "Warren Alvarez Memorial Bridge."
- The portion of U.S. 27/S.R. 25 between the Polk County line and the Glades County line in Highlands County as "Deputy William Gentry, Jr., Highway."

- The portion of S.R. 100 in Clay County between the Bradford County line and the Putnam County line as "Veterans Honor Highway."
- Upon completion of construction, the interchange at First Coast Expressway/S.R. 23 and Henley Road in Clay County as "Sergeant Eric John Twisdale Memorial Interchange."
- The portion of S.R. A1A between the northern terminus and southern terminus of Galt Ocean Drive in Broward County as "Pio Ieraci Memorial Drive."
- The portion of S.R. 520/W. King Street between S.R. 501/Clearlake Road and S.R. 519/Fiske Boulevard in Brevard County as "Sgt. George Lee Taylor, Sr., Memorial Highway."
- The portion of S.R. 519/Fiske Boulevard between Rosa L. Jones Drive and I-95 in Brevard County as "Dr. Martin Luther King, Jr., Boulevard."
- The portion of U.S. 90 between Canal Street and Stewart Street in Santa Rosa County as "Reverend Murray Hamilton, Sr., Highway."
- The portion of S.R. 87 between E. Bay Boulevard and U.S. 98 in Santa Rosa County as "Ira Mae Wells-Bruce Memorial Highway."
- The portion of Bayfront Parkway between Tarragona Street and N. 17th Avenue in Escambia County as "Pensacola Police Fallen Heroes Highway."
- The Cow Key Channel Bridge, bridge numbers 900086 and 900125, between milepost 4.100 and milepost 4.169 on Overseas Highway in Monroe County as "Cheryl H. Cates Memorial Bridge."
- The portion of S.R. 953/NW 42nd Avenue/Le Jeune Road from N.W. 11th Street to N.W. 14th Street in Miami-Dade County as "Oswaldo Payá Way."

The bill directs the Florida Department of Transportation (FDOT) to erect suitable markers.

The estimated cost to the FDOT to install the designation markers required under the bill is $18,720. See the "Fiscal Impact Statement" below for details.

The bill takes effect July 1, 2022.

II. Present Situation:

Section 334.071, F.S., provides that legislative designations of transportation facilities are for honorary or memorial purposes or to distinguish a particular facility. Such designations are not to be construed as requiring any action by local governments or private parties regarding the changing of any street signs, mailing addresses, or 911 emergency telephone number system listings, unless the legislation specifically provides for such changes.[1]

When the Legislature establishes road or bridge designations, the FDOT is required to place markers only at the termini specified for each highway segment or bridge designated by the law creating the designation and to erect any other markers it deems appropriate for the transportation facility.[2]

The FDOT may not erect the markers for honorary road or bridge designations unless the affected city or county commission enacts a resolution supporting the designation. When the

[1] Section 334.071(1), F.S.
[2] Section 334.071(2), F.S.

designated road or bridge segment is located in more than one city or county, each affected local government must pass resolutions supporting the designations before the installation of the markers.[3]

Deputy Sheriffs Donta Manuel and Jonathan Wallace

On November 28, 2007, as other deputies pursued a stolen vehicle that had just passed over "stop sticks" in the roadway on State Road 715 near Lake Okeechobee, Deputies Manuel and Wallace ran into the roadway in an attempt to remove the stop sticks. Apparently, due to the darkness, Deputies Manuel and Wallace did not perceive the speed at which the pursuing patrol cars were following behind the suspect vehicle. One of the pursuing patrol cars struck and killed both deputies. The driver of that pursuing patrol car was seriously injured and flown to a local hospital. One of the suspects in the stolen vehicle was apprehended a short time later.[4]

Deputy Manuel served with the Palm Beach County Sheriff's Office (PBCSO) for 13 years. He was survived by his wife, Suzette Manuel, sons Donta and Diontray Manuel, and daughter Dashja Trawick. Deputy Wallace served with the PBSCO for 18 months. He was survived by his mother, Patricia Wallace.[5]

Representative Alzo Reddick

Dr. Alzo J. Reddick, Sr., was born in Alturas, Florida, on November 15, 1937. He graduated from Jones High School in 1956. After earning his Bachelor of Science degree from Paul Quinn University in 1960, he served in the U.S. Army from 1961 to 1964 and returned home to teach at Phyllis Wheatley and Winter Park High Schools. Dr. Reddick earned a Master of Education degree from FAMU in 1971 and a Doctorate of Education from Nova University in 1977.[6]

Dr. Reddick was the first black man from Orlando to be elected to the state legislature since the Reconstruction Era and to sponsor legislation that became law. Known for his community service and a lifetime of accomplishments in education and politics, Dr. Reddick served in the Florida House of Representatives from 1982 to 2000.[7]

Virginia Creighton

Virginia Creighton worked in the field of wetland science and regulation for almost three decades, with a combination of government policy, regulatory, and environmental consulting experience. Ms. Creighton was a certified Professional Wetland Scientist and specialized in

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[3] Section 334.071(3), F.S.
[4] *See* the SunSentinel, *Stop Sticks help put the brakes on escaping criminals*, May 25, 2013, available at http://www.sun-sentinel.com/news/fl-xpm-2013-05-25-fl-stop-stick-20130525-story.html and the Palm Beach County Sheriff's Office, *Fallen Heroes*, available at https://www.pbso.org/inside-pbso/general/fallen-heroes/ (last visited January 30, 2022).
[5] *Id*.
[6] *See* Community Steeple, *Community Builder – Dr. Alzo J. Reddick, Sr.,* August 9, 2015available at https://www.communitysteeple.com/lifestyles-people/692-community-builder-dr-alzo-j-reddick-sr.html and the Orlando Sentinel, *Former state Rep. Alzo Reddick honored for historic career in education, politics*, July 8, 2021, available at https://www.orlandosentinel.com/news/os-ne-alzo-reddick-honored-20210708-f3hzsk7hmzabhfud34ummgrcfm-story.html (last visited January 30, 2022).
[7] *Id*.

formal jurisdictional determinations and wetland qualitative analyses. She acted as an environmental project manager on multiple FDOT and local-level projects, as well as for private developments, including small and large-scale developments of regional impact. She was directly involved in obtaining environmental resource permits for over fifty transportation projects. Ms. Creighton was essential to development of the Courtney Campbell Causeway – Old Tampa Bay Water Quality Improvement project, and she received an award for the Best Project in Florida from the FDOT in 2018. Ms. Creighton passed away on May 29, 2020, survived by her husband and two sons.[8]

Arturo Diaz Artiles

Arturo Diaz Artiles was a Cuban exile, born in Santa Clara Cuba in 1920 and immigrating to the City of Miami in 1962. In 1965, he opened the Santa Clara Pharmacy at the corner of Southwest 23rd Avenue and Southwest 8th Street in Miami, only the second Cuban-owned pharmacy in the city at the time. Mr. Artiles' pharmacy filled prescriptions, but it served as an important community gathering location for Cuban exiles, especially the elderly. Mr. Artiles operated the pharmacy for nearly 50 years until 2004. During that time, he also received the United Way of Miami-Dade County Gold award for 30 years of service to his community, the Latin Real Estate Organization Board of Directors Award, and the City of Miami's Certification of Appreciation. A founding member of the Latin Chamber of Commerce, the Miami-Dade County Commission issued a proclamation declaring February 25 as Arturo "Arturito" Diaz Artiles Day and presented him with a key to the county. Mr. Artiles passed away on November 11, 2013. He was survived by his three children, Arturo Diaz, Jr., Ana Cepero, and Aixa Schulte.[9]

Maximino Capdevila and Coralia Capdevila Road

In 1962, the Capdevila family emigrated from Cuba on Freedom Flights to Miami, settling in Tampa with their four boys. Mr. and Mrs. Capdevila opened their first business, La Teresita Grocery, in 1972, eventually expanding their efforts and finding success. Ultimately, in 1993, the Capdevilas opened a 14,000 square foot, two story building, La Teresita, housing a sit-down restaurant, a cafeteria, and a banquet hall. La Teresita continues in operation today, known for its service to the community and to people and cultures from all walks of life. Mr. Capdevila passed away on December 26, 2010, at the age of 82, survived by his wife, Coralia, two sons, grandchildren, great grandchildren, and extended family and friends.[10]

Sergeant First Class Michael C. Aten Memorial Highway

Born and raised in Eustis, Florida, and a graduate of Mount Dora High School, Sergeant First Class Michael C. "Soldier Mike" Aten served in the U.S. Army, became an Army Ranger, and served his county for 26 years. During his service, Sergeant Aten earned numerous military

[8] *See* email to Senate Transportation Committee staff, December 7, 2020 (on file in the Senate Transportation Committee). *See also* Legacy, *Virginia A. "Ginger" (Sinn) Creighton*, available at https://www.legacy.com/us/obituaries/staugustine/name/virginia-creighton-obituary?pid=196324025 (last visited January 30, 2021).
[9] *See* the City of Miami Resolution R-21-0059, February 11, 2021 (on file in the Senate Transportation Committee), *See also* letter from the children of Arturo Diaz Artiles, January 20, 2021 (on file in the Senate Transportation Committee).
[10] *See* Legacy.com, *Maximino Capdevila*, available at https://www.legacy.com/obituaries/tbo/obituary.aspx?pid=147472539 and LaTeresita, *Our Story*, available at https://www.lateresitarestaurant.com/the-story (last visited January 30, 2022).

awards, among them, the Bronze Star while serving in Iraq; the Army Commendation Medal with Combat "V," denoting battlefield valor; the Armed Forces Expeditionary Medal; and the Global War on Terrorism Service Medal. He was active in community service and had a love for motorcycle riding. Sergeant Aten lost his life in a motorcycle accident on January 3, 2020, at the age of 54, and was survived by his wife, Diana, his parents, his step-father, and his extended family and friends.[11]

Warren Alvarez

Former two-term Jacksonville City Council member Warren Alvarez was a native and lifelong resident of Jacksonville's Northside and lived all of his life on his family's dairy farm. He was active in agricultural and civic organizations and activities, serving on many boards, commissions, and organization at the county and state levels. Known for his advocacy for his constituents, Mr. Alvarez worked successfully to have Interstate 95 widened as it crosses the Trout River Bridge. Among many other community contributions, he was a founding member of EDEN (Economic Development and Enhancement of North Jacksonville), a member of the Northside Business Leaders Club, and a board member of the Jacksonville Zoo, the Jacksonville Fair Association, Methodist Hospice, the Duval County Cattlemen's Association, and Upper Florida Milk Producers. Mr. Alvarez passed away on March 6, 2021, at the age of 86. He was survived by his wife of 67 years, Mary; two daughters, two grandsons, a great granddaughter, three brothers, and a number of extended family and friends.[12]

Deputy William Gentry, Jr.

Deputy Gentry grew up in Fort Myers, joining the Highlands County Sheriff's Office (HCSO) in March of 2005 and joined the K-9 Unit as soon as he could. For four years, he and his K-9 partner, Roni, patrolled the county. When Roni retired from service in 2012, Deputy Gentry transferred back to road patrol and then to the Special Investigations Unit, targeting illegal drugs until 2013. After a brief period of time using his talents as an artist and woodworker to make custom pool cues, Deputy Gentry returned to the HCSO in 2017, becoming a field training deputy and mentoring young deputies beginning their law enforcement careers. Responding to an animal abuse call with a trainee, Deputy Gentry was shot by a 69 year-old suspect and succumbed to his wounds on May 7, 2018. He was survived by his parents, his younger brother, and his beloved dogs.[13]

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[11] *See* the Daily Commercial, *Taps for Sgt. 1st Class "Soldier Mike" Aten,* January 11, 2020, available at https://www.dailycommercial.com/story/news/local/2020/01/11/taps-for-sgt-lst-class-soldier-mike-aten/1918137007/; Minutes of the December 8, 2020, Regular Meeting of the Board of County Commissioners of Lake County, at "*Tab 3: PROCLAMATION 2020-215*," available at https://www.lakecountyclerk.org/forms/board_minutes/2020/12/2020-12-08_Regular_Meeting.htm; and Echovita, *Michael C. Aten Obituary*, available at https://www.echovita.com/us/obituaries/fl/umatilla/michael-c-aten-10215591 (last visited January 30, 2022).

[12] *See* Jacksonville City Council Resolution 2021-267-A, April 28, 2021 (on file in the Senate Transportation Committee) and Legacy.com, *Warren Alvarez*, available at https://www.legacy.com/us/obituaries/timesunion/name/warren-alvarez-obituary?id=6685153 (last visited January 30, 2022).

[13] *See* Officer Down Memorial Page, *Deputy Sheriff William Jackson Gentry, Jr.*, available at https://www.odmp.org/officer/23672-deputy-sheriff-william-jackson-gentry-jr and Legacy.com, *William J Gentry, Jr.*, available at https://www.legacy.com/obituaries/name/william-gentry-jr-obituary?pid=188976004 (last visited January 30, 2022).

Florida's Veterans

The Florida Department of Veterans Affairs notes that:

> Florida has earned a reputation as the most veteran-friendly state in the nation. Our state's veterans bring more than $18.4 billion federal dollars annually into Florida's economy.
>
> Florida has the third largest population of veterans in the nation after California and Texas with more than 1.5 million veterans – 12 percent of the Sunshine State's population 18 and over.[14]

The bill honors Florida's veterans in Clay County and throughout the state.

Sergeant Eric John Twisdale

Sergeant Twisdale served with the Clay County Sheriff's Office for 22 years, having previously served with the Jacksonville Sheriff's Office. One of thousands of law enforcement officers and other first responders throughout the county who contracted COVID-19 while selflessly serving the public, Sergeant Twisdale passed away on August 16, 2020, at the age of 49, after contracting the infection, presumably from exposure at the Sheriff's Office. Sergeant Twisdale was survived by his children, Katie, Thomas, and Stephanie; his grandchildren, Cain, Declan, Finola, Jameson, and Autumn (with a sixth grandchild on the way at the time of his death); his brothers, Norman and Tim; his sister, Debbie; and several aunts, uncles, nieces, nephews, and cousins.[15]

Pio Ieraci

Pio Ieraci was born in Windsor, Ontario, Canada and lived in Florida for over 30 years, finding professional success and becoming an active civic leader in Broward County. He was appointed to the City of Fort Lauderdale Education Advisory Board, served as the Chairman of the South Florida Business Advisors, Inc., and of the Broward Beach Coalition, and was instrumental in beach renourishment efforts. He also served as Chairman of the President's Council and the Galt Mile Community Association, and served the President of the Galt Ocean Club Condominium Association for over 20 years. Mr. Ieraci passed away at the age of 58 and was survived by his mother, Marcy; his wife, Lisa; his son and daughter, Daniel and Alessia, and other extended family and friends.[16]

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[14] *See* the Florida Department of Veterans' Affairs (FDVA), *Our Veterans*, available at https://floridavets.org/our-veterans/ (last visited January 30, 2022).
[15] *See* Officer Down Memorial Page, *Sergeant Eric John Twisdale*, available at https://www.odmp.org/officer/24909-sergeant-eric-john-twisdale and Dignity Memorial, *Sgt. Eric John Twisdale*, available at https://www.dignitymemorial.com/obituaries/jacksonville-fl/eric-twisdale-9368207 (last visited January 30, 2022).
[16] *See* Dignity Memorial, *Pio Richard Ieraci Obituary*, available at https://www.dignitymemorial.com/obituaries/fort-lauderdale-fl/pio-ieraci-9961464 (last visited January 30, 2022).

Sgt. George Lee Taylor, Sr.

George Lee Taylor, Sr., was born in Oak Hill, West Virginia, in 1950 and moved to Florida around 1960. He served in the U.S. Army after high school, from 1967 to 1971, as a Paratrooper with the 173rd Airborne Brigade during the Vietnam War. He served honorably, earning a Purple Heart, Bronze Star, and Combat Infantry Badge. After returning home, he worked tirelessly to address the needs of veterans, with a specific focus on finding homeless camps and the homeless veterans in them to help veterans get the care and housing they deserve. He founded National Veterans Homeless Support in 2008 and he is said to have helped to reduce the homeless veteran population in Brevard County by 90 percent. Mr. Taylor passed away on May 17, 2020, at the age of 70. He was survived by his wife, Jan; two sons, three daughters, three brothers, three sisters, and ten grandchildren.[17]

Dr. Martin Luther King, Jr.

Dr. King was a Baptist minister and social activist who led the civil rights movement in the United States from the mid-1950s until his death by assassination in 1968. His leadership led to the ending legal segregation in the south and other parts of the United States. He rose to national prominence as head of the Southern Christian Leadership Conference, promoting nonviolent efforts to achieve civil rights. He was awarded the Nobel Peace Prize in 1964.[18]

Reverend Murray Hamilton, Sr., Highway

Recognized for his many contributions and numerous achievements for the benefit of Santa Rosa County, Murray Hamilton, Sr., was the owner of H&H BBQ and was a reverend for eight years. He contributed his time for positive community action to the following organizations: The Democratic Black Caucus, the NAACP, Men with Visions, and the Lions Club. He served as Chair of the MLK Committee, which developed the annual MLK prayer breakfast and parade. He was also a founding member of "The Over the Hill Gang," which sponsored basketball tournaments and activities for youth and of "Citizens Moving Forward." Reverend Hamilton passed away on January 25, 2021.[19]

Ira Mae Wells-Bruce

Born in Pensacola, Ira Mae Wells-Bruce was Santa Rosa County's first female commissioner and the first female to serve as president of the board of directors for a local bank. She was known as a pioneer business, community, and political leader who contributed to the development and growth of Holley Navarre and Santa Rosa County. She operated Century 21 Island View Realty with her business partners for more than 40 years. She was a member of

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[17] *See* Legacy, *George Taylor, Sr.*, available at https://www.legacy.com/us/obituaries/floridatoday/name/george-taylor-obituary?pid=196267261 (last visited January 30, 2022).
[18] Britannica, *Martin Luther King, Jr.*, available at https://www.britannica.com/biography/Martin-Luther-King-Jr (last visited January 30, 2022).
[19] *See* Minutes of the April 13, 2021, Regular Meeting of the Board of County Commissioners of Santa Rosa County, available at https://santarosacofl.civicclerk.com/Web/Dialogs/AIDocs.aspx?id=427 (scroll down to "7) Administrative Committee" and click on "After Action – Executed Resolution – Murray Hamilton"); and Legacy.com, *Rev. Murray Hamilton Sr.*, available at https://www.legacy.com/us/obituaries/pensacolanewsjournal/name/murray-hamilton-obituary?id=7279692 (last visited January 30, 2022).

many civic, community, and business boards. Ms. Wells-Bruce passed away on December 1, 2020, survived by her husband, Gaius Bruce, three children, three grandchildren, three great grandchildren, and extended family and friends.[20]

Fallen Pensacola Police Officers

From 1889 through 1997, the Pensacola Police Department lost 14 officers while serving their community: Police Officers John William Robert Gordon, John Yelverton, William B. Burnham, J.D. Carter, Herbert Hatcher, Edward O-Brien Pursell, Louis J. Champa, Curtis Neal Jones, Amos Cross, and Stephen A. Taylor; Motorcycle Officer C.F. Bazzell; Officers Clinton A. Green and Glenn Rowe Austraw; and Detective Archie Bowman.[21]

Cheryl H. Cates

Cheryl Cates, the former First Lady of Key West, was a service-driven member of her community who enjoyed encouraging and supporting local nonprofits, with a special interest in children and families. Ms. Cates was a member of the Key West Woman's Club for 32 years and served the Zonta Club of Key West[22] for a decade, from which she received the Community Service Award of Excellence in 2012. She also served on the board of directors for Kids Come First and Wesley House Family Services, was vice president of Samuel's House[23] executive board, and was a member of the Key West Mystic Krewe. Among the many honors for her service to the community, Ms. Cates received the Key West Business Guild's Presidential Award in 2017 and the Key West Star Award from the Chamber of Commerce in 2016. Ms. Cates passed away on December 2, 2020, and was survived by her husband, five-term Mayor Craig Cates, as well as her three daughters, grandchildren, and other extended family.[24]

Oswaldo Payá

A father, a political activist, and the founder of the Christian Liberation Movement, Oswaldo Payá was one of the first outspoken opposition members in Cuba. He was the primary organizer of the Valera Project, advocating for democratic political reforms within Cuba.[25] Mr. Payá was admired by many for his selfless dedication to protecting human rights, opposing Cuba's one-party rule, and fighting for core human and political rights. Among his many recognitions, Mr. Payá received the Sakharov Prize for Freedom of Thought from the European Parliament in

[20] *See* Navarre Press, *Celebration of life to be held for Ira Mae Bruce*, May 1, 2021, available at https://navarrepress.com/celebration-of-life-to-be-held-for-ira-mae-bruce/ (last visited January 30, 2022).
[21] Officer Down Memorial Page, *Pensacola Police Department*, available at https://www.odmp.org/agency/3078-pensacola-police-department-florida (last visited February 14, 2022).
[22] Zonta is an organization of "women helping women," that provides, for example, scholarship awards to local high school girls and women, and a Heart Health Initiative that donates funds to women in the community for comprehensive screenings. *See* Zonta Club of Key West, *Community Service Projects*, available at http://www.zontakeywest.com/zonta-key-west-services (last visited February 14, 2022).
[23] Samuel's House provides emergency shelter to women and children. Samuelshouse.org, available at https://samuelshouse.org/ (last visited February 14, 2022).
[24] *See* keysnews.com, *Cheryl Cates*, December 16, 2020, available at https://www.keysnews.com/obituaries/cheryl-cates/article_df65f596-3bd8-11eb-9c52-f723c2127e1f.html (last visited February 14, 2022).
[25] *See* Wikipedia, *Varela Project*, available at https://en.wikipedia.org/wiki/Varela_Project (last visited February 15, 2022).

2002. On July 22, 2012, in an incident many believe to have been orchestrated by the Cuban regime, Mr. Payá died in a car accident.[26]

III. Effect of Proposed Changes:

The bill creates the following honorary or memorial road and bridge designations:

- The portion of S.R. 715/Bacom Point Road between W. Morgan Road and S.W. 14th Street in Palm Beach County as "Deputy Sheriff Donta Manuel and Deputy Sheriff Jonathan Wallace Highway."
- The portion of S.R. 423/John Young Parkway between S.R. 408 and Orange Center Boulevard in Orange County as "Rep. Alzo Reddick Road."
- Bridge number 100850 on S.R. 60/Courtney Campbell Causeway over Old Tampa Bay in Hillsborough County as "Virginia Creighton Bridge."
- The intersection of S.W. 23rd Avenue and S.W. 8th Street in Miami-Dade County as "Arturo Diaz Artiles Plaza."
- The portion of W. Columbus Drive between N. Himes Avenue and N. MacDill Avenue in Hillsborough County as "Maximino Capdevila and Coralia Capdevila Road."
- The portion of S.R. 19 between C.R. 48 and Lane Park Cutoff Road in Lake County as "Sergeant First Class Michael C. Aten Memorial Highway."
- Bridge number 720684 on I-95 over the Trout River in Jacksonville/Duval County as "Warren Alvarez Memorial Bridge."
- The portion of U.S. 27/S.R. 25 between the Polk County line and the Glades County line in Highlands County as "Deputy William Gentry, Jr., Highway."
- The portion of S.R. 100 in Clay County between the Bradford County line and the Putnam County line as "Veterans Honor Highway."
- Upon completion of construction, the interchange at First Coast Expressway/S.R. 23 and Henley Road in Clay County as "Sergeant Eric John Twisdale Memorial Interchange."
- The portion of S.R. A1A between the northern terminus and southern terminus of Galt Ocean Drive in Broward County as "Pio Ieraci Memorial Drive."
- The portion of S.R. 520/W. King Street between S.R. 501/Clearlake Road and S.R. 519/Fiske Boulevard in Brevard County as "Sgt. George Lee Taylor, Sr., Memorial Highway."
- The portion of S.R. 519/Fiske Boulevard between Rosa L. Jones Drive and I-95 in Brevard County as "Dr. Martin Luther King, Jr., Boulevard."
- The portion of U.S. 90 between Canal Street and Stewart Street in Santa Rosa County as "Reverend Murray Hamilton, Sr., Highway."
- The portion of S.R. 87 between E. Bay Boulevard and U.S. 98 in Santa Rosa County as "Ira Mae Wells-Bruce Memorial Highway."
- The portion of Bayfront Parkway between Tarragona Street and N. 17th Avenue in Escambia County as "Pensacola Police Fallen Heroes Highway."
- The Cow Key Channel Bridge, bridge numbers 900086 and 900125, between milepost 4.100 and milepost 4.169 on Overseas Highway in Monroe County as "Cheryl H. Cates Memorial Bridge."

[26] *See* International Republican Institute, *Remembering Oswaldo Payá*: *The Legacy of a Cuban Visionary*, July 21, 2020, available at https://www.iri.org/news/remembering-oswaldo-paya-the-legacy-of-a-cuban-visionary/, and *see also* legacy.com, Bennington Banner, *Oswaldo Payá*, available at https://www.legacy.com/us/obituaries/bennington/name/oswaldo-paya-obituary?pid=158710173 (both sites last visited February 15, 2022).

- The portion of S.R. 953/NW 42nd Avenue/Le Jeune Road from N.W. 11th Street to N.W. 14th Street in Miami-Dade County as "Oswaldo Payá Way."

The bill directs the FDOT to erect suitable markers.

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:

The estimated cost to erect the designation markers required under this bill is $18,720, based on the assumption that a minimum of two markers are required for each designation at a cost to the FDOT of no less than $520 each. The estimate includes sign fabrication, installation, and maintenance over time but does not include any additional expenses related to maintenance of traffic, dedication event costs, or replacement necessitated by damage, vandalism, or storm events. The FDOT is expected to absorb the estimated cost within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates an undesignated section of Florida law.

IX. Additional Information:

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

CS/CS by Appropriations on February 28, 2022:
The committee substitute adds the following designations to the bill:
- "Pensacola Police Fallen Heroes Highway" in Escambia County.
- "Cheryl H. Cates Memorial Bridge" in Monroe County.
- "Oswaldo Payá Way" in Miami-Dade County.

CS by the Transportation Committee on January 25, 2022:
The committee substitute adds the following designations to the bill:
- "Rep. Alzo Reddick Road" in Orange County.
- "Virginia Creighton Bridge" in Hillsborough County.
- "Arturo Diaz Artiles Plaza" in Miami-Dade County.
- "Maximino Capdevila and Coralia Capdevila Road" in Hillsborough County.
- "Sergeant First Class Michael C. Aten Memorial Highway" in Lake County.
- "Warren Alvarez Memorial Bridge" in Jacksonville/Duval County.
- "Deputy William J. Gentry, Jr. Highway in Clay County.
- "Veterans Honor Highway" in Clay County.
- "Sergeant Eric John Twisdale Memorial Interchange" in Clay County.
- "Pio Ieraci Memorial Drive" in Broward County.
- "Sgt. George Lee Taylor, Sr., Memorial Highway" in Brevard County.
- "Dr. Martin Luther King, Jr., Boulevard in Brevard County.
- "Reverend Murray Hamilton, Sr., Highway" in Santa Rosa County.
- "Ira Mae Wells-Bruce Memorial Highway in Santa Rosa County.

B. Amendments:

None.

By the Committee on Transportation; and Senator Harrell

596-02311-22 2022160c1

A bill to be entitled

An act relating to transportation-related facility designations; providing honorary designations of certain transportation facilities in specified counties; directing the Department of Transportation to erect suitable markers; providing an effective date.

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

Section 1. Transportation facility designations; Department of Transportation to erect suitable markers.—

(1) That portion of S.R. 715/Bacom Point Road between W. Morgan Road and S.W. 14th Street in Palm Beach County is designated as "Deputy Sheriff Donta Manuel and Deputy Sheriff Jonathan Wallace Highway."

(2) That portion of S.R. 423/John Young Parkway between S.R. 408 and Orange Center Boulevard in Orange County is designated as "Rep. Alzo Reddick Road."

(3) Bridge number 100850 on S.R. 60/Courtney Campbell Causeway over Old Tampa Bay in Hillsborough County is designated as "Virginia Creighton Bridge."

(4) The intersection of S.W. 23rd Avenue and S.W. 8th Street in Miami-Dade County is designated as "Arturo Diaz Artiles Plaza."

(5) That portion of W. Columbus Drive between N. Himes Avenue and N. MacDill Avenue in Hillsborough County is designated as "Maximino Capdevila and Coralia Capdevila Road."

(6) That portion of S.R. 19 between C.R. 48 and Lane Park

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

596-02311-22 2022160c1

Cutoff Road in Lake County is designated as "Sergeant First Class Michael C. Aten Memorial Highway."

(7) Bridge number 720684 on I-95 over the Trout River in Jacksonville/Duval County is designated as "Warren Alvarez Memorial Bridge."

(8) That portion of U.S. 27/S.R. 25 between the Polk County line and the Glades County line in Highlands County is designated as "Deputy William Gentry, Jr., Highway."

(9) That portion of S.R. 100 in Clay County between the Bradford County line and the Putnam County line is designated as "Veterans Honor Highway."

(10) Upon completion of construction, the interchange at First Coast Expressway/S.R. 23 and Henley Road in Clay County is designated as "Sergeant Eric John Twisdale Memorial Interchange."

(11) That portion of S.R. A1A between the northern terminus and southern terminus of Galt Ocean Drive in Broward County is designated as "Pio Ieraci Memorial Drive."

(12) That portion of S.R. 520/W. King Street between S.R. 501/Clearlake Road and S.R. 519/Fiske Boulevard in Brevard County is designated as "Sgt. George Lee Taylor, Sr., Memorial Highway."

(13) That portion of S.R. 519/Fiske Boulevard between Rosa L. Jones Drive and I-95 in Brevard County is designated as "Dr. Martin Luther King, Jr., Boulevard."

(14) That portion of U.S. 90 between Canal Street and Stewart Street in Santa Rosa County is designated as "Reverend Murray Hamilton, Sr., Highway."

(15) That portion of S.R. 87 between E. Bay Boulevard and

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

U.S. 98 in Santa Rosa County is designated as "Ira Mae Wells-Bruce Memorial Highway."

(16) The Department of Transportation is directed to erect suitable markers designating the transportation facilities as described in this section.

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
Reapportionment

SELECT SUBCOMMITTEE:
Select Subcommittee on Congressional Reapportionment

SENATOR GAYLE HARRELL
25th District

February 16, 2022

Senator Kelli Stargel
420 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Stargel,

I respectfully request that **SB 160 – Transportation Facility Designations** be placed on the next available agenda for the Appropriations 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: Tim Sadberry, Staff Director
Alicia Weiss, Committee Administrative Assistant

REPLY TO:
❒ 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019 FAX: (888) 263-7895
❒ 322 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

The Florida Senate

APPEARANCE RECORD

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

February 28, 2022
Meeting Date

Appropriations
Committee

SB 160
Bill Number or Topic

Amendment Barcode (if applicable)

Name Matt Puckett

Phone

Address 300 East Brevard Street
Street

Email matt@flpba.org

Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida Police Benevolent Association

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2-28-2022
Meeting Date

Approps
Committee

Consent SB 160
Bill Number or Topic

Amendment Barcode (if applicable)

Name Melissa McKinlay, Commissioner Phone 561-355-2206

Address Palm Beach County 301 N. Olive Ave Email mmckinlay@pbcgov.org
Street

WPB 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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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 Appropriations

BILL:	PCS/CS/SB 358 (712708)
INTRODUCER:	Appropriations Subcommittee on Health and Human Services; Health Policy Committee; and Senator Rodriguez
SUBJECT:	Professional Counselors Licensure Compact
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Brown	HP	**Fav/CS**
2.	Howard	Money	AHS	**Recommend: Fav/CS**
3.	Howard	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 358 authorizes Florida to participate in the Professional Counselors Licensure Compact (counseling compact or compact) for the licensure of mental health counselors and makes changes to the practice acts for mental health counselors, a clinical social workers, and marriage and family therapists. The compact takes effect upon its enactment by 10 states, and to date, only two states have enacted the compact. The bill grants 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 in another member state, both in-person and through telehealth.

The bill also:

- Requires the Department of Health (department) to report any significant investigatory information relating to a health care practitioner practicing under the compact to the compact's licensure data system.
- Provides for the participation of impaired practitioners who are practicing under the compact in impaired practitioner programs.
- Requires the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (Board) to appoint an individual to serve as Florida's delegate on the Counseling Compact Commission (commission).
- Authorizes the Board to take adverse action against a mental health counselor's privilege to practice under the compact and authorizes the Board to impose grounds for discipline.

- Designates the state delegate and other members or employees of the commission as state agents for the purpose of applying waivers of sovereign immunity.

According to the department, the provisions of the bill relating to the compact will have a significant fiscal impact on the department requiring one additional full-time equivalent (FTE) position to support the workload associated with processing applications and issuing initial and renewal licenses and privileges to practice. The bill authorizes member states to charge a fee for granting a privilege to practice under the compact. The number of applicants for compact licensure is indeterminate and the department indicates that the fiscal impact cannot be calculated.[1]

The commission may collect an annual assessment from each member state or impose fees on other parties to cover the cost of operations and activities. The annual membership cost with the Professional Counselors Licensure Compact is unknown at this time.

The bill amends a provision authorizing the Board to make a one-time exception for mental health counselor, clinical social worker, and marriage and family therapist intern registration requirements for emergency or hardship cases by removing the requirement that the candidate pass a theory and practice examination, effective upon the act becoming a law.

The bill amends the practice acts for mental health counselors, a clinical social workers, and marriage and family therapists to replace the words "intern" and "internship" with "associate" and "associateship," effective July 1, 2022.

The bill provides an effective date contingent on the enactment of the compact into law by 10 states, except as otherwise expressly provided in the bill, and requires the department to notify the Division of Law Revision in that event.

II. Present Situation:

Occupational Licensure Compacts

Interstate compacts are authorized under the U.S. Constitution, Article I, Section 10, cl. 3.[2] Compacts that affect a power delegated to the federal government or that affect or alter the political balance within the federal system require the consent of Congress.[3] The licensing of professions is predominantly a state responsibility as each state has developed its own regulations, oversight boards, and requirements for dozens of professions and occupations.

In September 2018, the Federal Trade Commission (FTC) looked at the issue of state-by-state occupational licensure and its unintended consequences. In particular, the FTC noted that state-by-state licensing can have a particularly hard effect on those in the military and their spouses who are required to move frequently, those who provide services across state lines, or deliver

[1] Department of Health, 2022 Senate Bill 358 Legislative Bill Analysis (Oct. 25, 2021) (on file with the Senate Committee on Health Policy).
[2] "No state shall, without the Consent of Congress…enter into any Agreement or Compact with another State, or with a foreign Power[.]" *see* U.S. CONST. art. I, s. 10, cl. 3. While the language of the provision says congressional approval is required, not all compacts require congressional approval.
[3] *Virginia v. Tennessee*, 148 U.S. 503 (1893).

services through telehealth.[4] The FTC also suggested that improved licensed portability would enhance competition, choice, and access for consumers, especially where services may be in short supply.[5]

According to the Council of State Governments (CSG), since January 2016, 170 separate pieces of licensure compact legislation have been passed in the United States.[6] To date, 42 states and territories have enacted occupational licensure compacts for nurses, physicians, physical therapists, emergency medical technicians, psychologists, speech therapists, audiologists, occupational therapists, and counselors.[7]

Nurse Licensure Compact

On January 19, 2018, licensed Florida nurses became eligible to apply for a multi-state license under the enhanced Nurse Licensure Compact (eNLC.)[8] The eNLC allows registered nurses and licensed practical nurses who hold licensure in one Compact state to practice in any of the 27 Compact states without obtaining additional state licenses. The Department of Health (department) reports that the eNLC has effectively reduced regulatory requirements by eliminating the need for nurses to obtain a separate license to practice in different states.[9] Florida joined the Nurse Licensure Compact upon the passage of HB 1061 during the 2016 regular Legislative Session.[10] The eNLC was officially enacted when North Carolina Governor Roy Cooper, signed legislation to become the 26th state to join the compact on July 20, 2017.[11] That date became the effective date for the start of the compact commission, an agency governing the compact.[12]

Interstate Compact for Licensed Professional Counselors

The Interstate Compact for Licensed Professional Counselors (counseling compact or 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.[13] 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).[14]

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[4] Federal Trade Commission, *Policy Perspectives, Options to Enhance Occupational License Portability* (September 2018), *available at* https://www.ftc.gov/system/files/documents/reports/options-enhance-occupational-license-portability/license_portability_policy_paper.pdf (last visited Oct. 31, 2021).
[5] *Id*.
[6] *Supra* note 1.
[7] *Id*.
[8] *Id*.
[9] *Id*.
[10] Chapter 2016-139, Laws of Fla.
[11] Debra Wood, RN., *The Enhanced Nurse Licensure* (July 28, 2017) *available at* https://www.nursechoice.com/blog/profiles-and-features/the-enhanced-nurse-licensure-compact-explained/ (last visited Oct. 31, 2021).
[12] *Id.*
[13] Counseling Compact, *News*, *available at* https://counselingcompact.org/news/ (last visited Oct. 31, 2021).
[14] Counseling Compact, *Maps*, *available at* https://counselingcompact.org/map/ (last visited Oct. 31, 2021).

Interstate Licensure Compact for Social Work[15]

The National Association of Social Workers is beginning to pursue its own Interstate Licensure Compact for Social Work. That draft compact has not yet been finalized.

Model of Marriage and Family Therapy License Portability[16]

Rather than pursue a compact, the American Association for Marriage and Family Therapy has created a Model of Marriage and Family Therapy (MFT) License Portability. This portability model is a full endorsement model, meaning that a state will license an applicant as a licensed marriage and family therapist if the applicant has a valid and unrestricted license to practice marriage and family therapy in another state.

Mental Health Counseling in Florida

The licensed Mental Health Counseling profession continues to expand in Florida and has reported an average growth in recent years of more than 1,000 new licensees per year, increasing the total licensed population to 15,518 practitioners.[17]

Florida law delineates between an application by examination for initial licensure and application by endorsement for mental health counselors who have previously held an active, unencumbered, license in another state. The application for licensure as a mental health counselor includes a mandatory disclosure of criminal history, but applicants are not required to submit fingerprints to complete a criminal background check.[18] Section 456.0135, F.S., provides the department with authority to mandate criminal background checks for specified professions and mental health professions regulated by ch. 491, F.S., are not included in the list of specified professions.

Licensure of Mental Health Counselors by Examination

Pursuant to s. 491.005(4), F.S., the department shall license an applicant as a mental health counselor, if he or she:

- Pays the appropriate fee;
- Possesses a minimum of a master's degree from a regionally accredited program in Mental Health Counseling or a closely related field that consists of at least 60 semester hours or 80 quarter hours and specific graduate coursework, including: Counseling Theories and Practice, Human Growth and Development, Diagnosis and Treatment of Psychopathology, Human Sexuality, Group Theories and Practice, Individual Evaluation and Assessment, Career and Lifestyle Assessment, Research and Program Evaluation, Social and Cultural Foundations, Substance Abuse, and Legal, Ethical, and Professional Standards Issues. Beginning July 1, 2025, an applicant must have a master's degree from a program that is accredited by the

[15] National Association of Social Workers, *Interstate Licensure Compact*, https://www.socialworkers.org/Advocacy/Social-Justice/Interstate-Licensure-Compact-for-Social-Work (last visited Oct. 31, 2021).
[16] American Association for Marriage and Family Therapy, *MFT License Portability*, https://www.aamft.org/AAMFT/ADVANCE_the_Profession/License_Portability/Advocacy/MFT%20License%20Portability.aspx (last visited Nov. 4, 2021).
[17] *Supra* note 1.
[18] *Id.*

Council for Accreditation of Counseling and Related Educational Programs (CACREP) which consists of at least 60 semester hours or 80 quarter hours to be licensed;[19]
- Has had at least two years of clinical experience in mental health counseling. Initial applicants must provide documentation to demonstrate completion of a 700-hour university-sponsored clinical practicum or internship with at least 280 hours of direct client services. After graduation, registered mental health counselor interns are required to complete post-graduate supervised experience conducted under the supervision of a board-approved qualified supervisor with at least 100 hours of supervision in no less than 100 weeks. Supervision experience hours are accrued on an hour-for-hour basis by providing face-to-face psychotherapy with clients. Registered interns are required to meet with their qualified supervisor every two weeks to review cases and to receive guidance;
- Has passed the National Clinical Mental Health Counseling Examination (NCMHCE) developed by the National Board for Certified Counselors (NBCC);[20]
- Completes a three-hour course on HIV/Aids pursuant to s. 491.0065, F.S.; and
- Agrees to complete a two-hour domestic violence course within six months of licensure.[21]

Licensure of Mental Health Counselors by Endorsement

Applicants by endorsement who have practiced mental health counseling in another state for at least three out of the last five years are considered to have completed all minimum education, practicum, and supervision requirements and are required to provide limited documentation to become licensed.[22] As a method to streamline licensure for experienced mental health counselors, Florida law does not require endorsement candidates to provide proof of education nor demonstrate completion of supervised experience.[23] Pursuant to s. 491.006, F.S., the department shall license an applicant as a mental health counselor if he or she:

- Pays the appropriate fee;
- Holds a valid license to practice in another state and have practiced for at least three out of the last five years preceding licensure;
- Demonstrates, in a manner designated by rule of the Board, knowledge of the laws and rules governing the practice of mental health counseling in Florida. Rule 64B4-3.0035 requires these applicants to complete an eight hour course and obtain a passing score on a corresponding examination;
- Has passed the NCMHCE or a licensing examination substantially equivalent to the NCMHCE in another state or in this state;
- Completes a three-hour course on HIV/Aids pursuant to s. 491.0065, F.S.;
- Agrees to complete a two-hour domestic violence course within six months of licensure;[24] and

[19] *Id.*
[20] *Id.*
[21] Florida Board of Clinical Social Work, Marriage & Family Therapy, and Mental Health Counseling, *Licensed Mental Health Counselor: Requirements available at* https://floridasmentalhealthprofessions.gov/licensing/licensed-mental-health-counselor/#tab-requirements (last accessed Oct. 31, 2021).
[22] *Supra* note 1.
[23] *Id.*
[24] *Id.* at 20.

- Holds a license in good standing and is not under investigation in Florida or another jurisdiction for an act which would constitute a violation of ch. 491, F.S.

Mental Health Counseling in Florida Through Telehealth

In 2019, the Legislature passed and the Governor approved CS/CS/HB 23, which created s. 456.47, F.S. The bill became effective on July 1, 2019.[25] It authorized Florida-licensed health care providers, including mental health counselors who are either Florida-licensed or licensed under a multi-state health care licensure compact of which Florida is a member state,[26] to use telehealth to deliver health care services within their respective scopes of practice.

The bill also authorized out-of-state health care providers to use telehealth to deliver health care services to Florida patients if they register with the department or the applicable board[27] and meet certain eligibility requirements.[28] A registered out-of-state telehealth provider may use telehealth, within the relevant scope of practice established by Florida law and rule, to provide health care services to Florida patients but is prohibited from opening an office in Florida and from providing in-person health care services to patients located in Florida.

The Legislature also passed HB 7067 in 2019 that would have required an out-of-state telehealth provider to pay an initial registration fee of $150 and a biennial registration renewal fee of $150, but the bill was vetoed by the Governor and did not become law.[29]

On March 21, 2020, Surgeon General Scott Rivkees executed the department's Emergency Order 20-003[30] to authorize certain out-of-state clinical social workers, marriage and family therapists, mental health counselors, and psychologists to provide telehealth in Florida without the need to register as a telehealth provider under s. 456.47(4), F.S. These emergency orders were extended and expired on June 26, 2021.[31] Out-of-state health care practitioners are no longer authorized to perform telehealth services for patients in Florida unless they become licensed or registered in Florida.

Florida-licensed providers may not provide health care services to clients located in other states without express authorization from each state.

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[25] Chapter 2019-137, s. 6, Laws of Fla.
[26] Section 456.47(1)(b), F.S.
[27] Under s. 456.001(1), F.S., the term "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 department or, in some cases, within the department's Division of Medical Quality Assurance. The
[28] Section 456.47(4), F.S.
[29] Transmittal Letter from Governor Ron DeSantis to Secretary of State Laurel Lee (June 27, 2019) *available at* https://www.flgov.com/wp-content/uploads/2019/06/06.27.2019-Transmittal-Letter-3.pdf (last visited Feb. 14, 2021).
[30] Department of Health, State of Florida, *Emergency Order department No. 20-003* (Mar. 21, 2020) *available at* https://s33330.pcdn.co/wp-content/uploads/2020/03/DOH-EO-20-003-3.21.2020.pdf (last visited Oct. 21, 2021).
[31] Florida Board of Medicine, *Important Updates for Health Care Providers Regarding Expiration of Emergency Orders* (July 1, 2021) *available at* https://r.bulkmail.flhealthsource.gov/mk/mr/JV-U0AMitwBXlP7zcFx3Djqu1KfE1B57JaGN-nnNySmOjEY5xGSsIyII28XjOGeZ4yKv9rWQUryqAibmdrixNZdgE9Q61dmUoHRF1Rnyijg-ewyAl_rZBT8c (last visited Oct. 18, 2021).

Sovereign Immunity

Sovereign immunity generally bars lawsuits against the state or its political subdivisions for torts committed by an officer, employee, or agent of such governments unless the immunity is expressly waived. The Florida Constitution recognizes that the concept of sovereign immunity applies to the state, although the state may waive its immunity through an enactment of general law.[32]

In 1973, the Legislature enacted s. 768.28, F.S., a partial waiver of sovereign immunity, allowing individuals to sue state government and its subdivisions.[33] According to subsection (1), individuals may sue the government under circumstances where a private person "would be liable to the claimant, in accordance with the general laws of [the] state . . ." Section 768.28(5), F.S., imposes a $200,000 limit on the government's liability to a single person, and a $300,000 total limit on liability for claims arising out of a single incident.

III. Effect of Proposed Changes:

Section 1 creates the Professional Counselors Licensure Compact as s. 491.017, F.S., which enters Florida into the compact. The compact has 15 articles that establish the compact's administration and components and prescribe how the commission will oversee the compact and conduct its business. The table below summarizes the new statutory language, by article, which creates the components of the compact.

Provisions of the Professional Counselors Licensure Compact		
Article	**Title**	**Description**
I	Purpose	The primary purpose of the compact is to facilitate the interstate practice of licensed professional counselors with the goal of improving public access to professional counseling services.
II	Definitions	Definitions are provided for the following terms: • "Active duty military" means full-time duty status in the active uniformed service of the United States, including, but not limited to, members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. chapters 1209 and 1211. • "Adverse action" means any administrative, civil, or criminal action authorized by a state's laws which is imposed by a licensing board or other authority against a licensed professional counselor, including actions against an individual's license or privilege to practice, such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, issuance of a cease and desist action, or any other encumbrance on licensure affecting a licensed professional counselor's authorization to practice.

[32] FLA. CONST. art. X, s. 13.
[33] Chapter 73-313, L.O.F., codified at s. 768.28, F.S.

Provisions of the Professional Counselors Licensure Compact		
Article	**Title**	**Description**

		• "Alternative program" means a nondisciplinary monitoring or practice remediation process approved by a professional counseling licensing board to address impaired practitioners.
		• "Continuing education" means a requirement, as a condition of license renewal, to participate in or complete educational and professional activities relevant to the licensee's practice or area of work.
		• "Counseling Compact Commission" or "commission" means the national administrative body whose membership consists of all states that have enacted the compact.
		• "Current significant investigative information" means:
		  o Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the licensed professional counselor to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or
		  o Investigative information that indicates that the licensed professional counselor represents an immediate threat to public health and safety, regardless of whether the licensed professional counselor has been notified and had an opportunity to respond.
		• "Data system" means a repository of information about licensees, including, but not limited to, information relating to continuing education, examinations, licensure statuses, investigations, the privilege to practice, and adverse actions.
		• "Encumbered license" means a license in which an adverse action restricts the practice of licensed professional counseling by the licensee and said adverse action has been reported to the National Practitioner Data Bank.
		• "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of licensed professional counseling by a licensing board.
		• "Executive committee" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.
		• "Home state" means the member state that is the licensee's primary state of residence.
		• "Impaired practitioner" means an individual who has a condition that may impair his or her ability to safely practice as a licensed professional counselor without intervention. Such impairment may include, but is not limited to, alcohol or drug dependence, mental health conditions, and neurological or physical conditions.

Provisions of the Professional Counselors Licensure Compact		
Article	**Title**	**Description**
		• "Investigative information" means information, records, or documents received or generated by a professional counseling licensing board pursuant to an investigation. • "Jurisprudence requirement," if required by a member state, means the assessment of an individual's knowledge of the laws and rules governing the practice of professional counseling in a state. • "Licensed professional counselor" means a mental health counselor licensed under ch. 491, F.S., or a counselor licensed by a member state, regardless of the title used by that state, to independently assess, diagnose, and treat behavioral health conditions. • "Licensee" means an individual who currently holds an authorization from the state to practice as a licensed professional counselor. • "Licensing board" means the agency of a state, or equivalent, that is responsible for the licensing and regulation of licensed professional counselors. • "Member state" means a state that has enacted the compact. • "Privilege to practice" means a legal authorization, which is equivalent to a license, authorizing the practice of professional counseling in a remote state. • "Professional counseling" means the assessment, diagnosis, and treatment of behavioral health conditions by a licensed professional counselor. • "Remote state" means a member state, other than the home state, where a licensee is exercising or seeking to exercise the privilege to practice. • "Rule" means a regulation adopted by the commission which has the force of law. • "Single state license" means a licensed professional counselor license issued by a member state which authorizes practice only within the issuing state and does not include a privilege to practice in any other member state. • "State" means any state, commonwealth, district, or territory of the United States of America which regulates the practice of professional counseling. • "Telehealth" means the application of telecommunication technology to deliver professional counseling services remotely to assess, diagnose, and treat behavioral health conditions. • "Unencumbered license" means a license that authorizes a licensed professional counselor to engage in the full and unrestricted practice of professional counseling.

Provisions of the Professional Counselors Licensure Compact		
Article	**Title**	**Description**
III	State Participation	To participate in the compact, a state must currently do all of the following: • License and regulate licensed professional counselors. • Require licensees to pass a nationally recognized exam. • Require licensees to have a 60 semester hour, or 90 quarter hour, master's degree in counseling or 60 semester hours, or 90 quarter hours, of graduate coursework in relevant areas. • Require licensees to complete a supervised postgraduate professional experience, *as defined by the commission*. • Have a mechanism in place for receiving and investigating complaints about licensees. (Initial Florida applicants must possess a master's degree from a regionally accredited program in mental health counseling or a closely related field that consists of at least 60 semester hours or 80 quarter hours and required graduate coursework. Initial Florida applicants must also complete two years of clinical experience in mental health counseling as a registered mental health counselor intern.) A member state must: • Participate fully in the compact commission's licensure data system. • Notify the commission of any adverse action against or of current significant investigative information regarding a licensee. • Conduct criminal background checks of candidates for an initial privilege to practice. • Comply with rules of the commission, established in article IX. • Grant the privilege to practice professional counseling to a licensee holding a valid, unencumbered license in another member state. • Provide for the state's commissioner to attend the meetings of the commission. A member state may charge a fee for granting a privilege to practice. A licensed professional counselor may only utilize the compact if their home state joins the compact.
IV	Privilege to Practice	A licensee may seek a privilege to practice within a remote state. To exercise the privilege to practice professional counseling within a remote state, a licensee must:

Provisions of the Professional Counselors Licensure Compact		
Article	**Title**	**Description**
		• Hold a license in his or her home state which must be a member of the compact. • Have had no encumbrance or restriction against any license or privilege to practice within the previous two years. • *Meet any continuing education and jurisprudence requirements of the remote state and pay all applicable fees*. • Report to the commission any adverse action, encumbrance, or restriction imposed on the licensee by a non-member state within 30 days from the date of the action. A privilege to practice is valid until the expiration date of the practitioner's home state license. A licensee providing professional counseling in a remote state under the privilege to practice must adhere to the laws and regulations of the remote state. If a licensee's home state license is encumbered, the licensee loses the privilege to practice in any remote state for the next two years. If a licensee's privilege to practice is removed by a member state, the licensee may lose their privilege to practice in member states for the next two years.
V	Obtaining a New Home State License based on a Privilege to Practice	A licensee may hold a home state license in only one member state at a time. A licensee who moves from one member state to another member state may obtain a new, expedited home state license in the new state of residence if he or she holds a privilege to practice in the new state. The licensee will be required to complete a new FBI fingerprint-based criminal background check if not previously performed, complete any required state-level background check, *meet any jurisprudence requirements of the new home state*, and pay all applicable fees. (Florida-licensed mental health counselors are not currently required to be fingerprinted and background-screened as a condition of licensure. See s. 456.0135, F.S. If the compact is enacted in Florida, single-state applicants and registered interns would not be required to submit to a criminal history check, but applicants under the compact would be.) If a new home state license is granted, the former home state must convert the former home state license into a privilege to practice.

Provisions of the Professional Counselors Licensure Compact		
Article	**Title**	**Description**
VI	Active Duty Military Personnel and their Spouses	Active duty military personnel, or their spouse, may designate a home state where the individual has a current license in good standing. This state serves as the individual's home state for the duration of the service member's active duty.
VII	Compact Privilege to Practice Telehealth	Member states must recognize the right of a licensed professional counselor to practice professional counseling in any member state through telehealth under a privilege to practice. A licensee providing telehealth services in a remote state must adhere to the laws and regulations of that state.
VIII	Adverse Actions	Only a practitioner's home state has the power to take adverse action against a home state license. Home states must give the same priority and effect to reported conduct received from a member state as it would if the conduct had occurred within the home state. The home state must apply its own state laws to determine appropriate action in such cases. Remote states may take adverse action against a counselor's privilege to practice within that member state and may issue enforceable subpoenas for witnesses and evidence from other member states. A member state, if authorized by state law, may recover from the affected licensed professional counselor the costs of investigations and dispositions of any cases resulting from adverse action taken against that licensed professional counselor. Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact. If a member state takes adverse action, it must promptly notify the administrator of the data system. The administrator shall promptly notify the licensee's home state of any adverse actions by remote states. The bill maintains the right for state boards to require licensees to participate in impaired practitioner programs.
IX	Establishment of Counseling Compact Commission	The Counseling Compact Commission (commission) is established by the member states as a joint public agency. Judicial proceedings by or against the commission must be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent that it adopts

Provisions of the Professional Counselors Licensure Compact		
Article	**Title**	**Description**
		or consents to participate in alternative dispute resolution proceedings. *Nothing in the compact may be construed as a waiver of sovereign immunity.* 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 is directed to establish a term of office for delegates and may establish term limits. The commission must meet at least once during each calendar year and all meetings must be open to the public. The commission, or the executive committee of the commission may convene in a closed, nonpublic meeting under certain circumstances. (See "Public Records/Open Meetings Issues" in Section IV of this analysis.) The commission must keep detailed minutes. The commission may establish and maintain a code of ethics, bylaws, rules, a budget, financial records, and may initiate or prosecute legal proceedings or actions in the name of the commission, in order to carry out the compact. The commission must select an executive committee composed of up to eleven members: seven members of the commission and up to four ex-officio, nonvoting members from four recognized national professional counselor organizations. The executive committee must meet at least annually and must, at a minimum, do all of the following: • Make recommendations to the commission for any changes to the rules, bylaws, compact legislation, fees paid by member states, and fees charged to licensees for the privilege to practice. • Prepare and recommend the budget. • Maintain financial records. • Monitor compliance of member states and provide compliance reports to the commission. • Establish additional committees as necessary. The commission must pay or provide for the payment of certain reasonable expenses and may accept appropriate revenue. The commission may not incur obligations of any kind before securing funds adequate to meet the same. Receipts and disbursements of

Provisions of the Professional Counselors Licensure Compact		
Article	**Title**	**Description**
		funds handled by the commission must be audited annually by a certified or licensed public accountant. The commission may levy and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff. Such assessments and fees must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount must be allocated based on a formula to be determined by the commission, which must adopt a rule binding on all member states. Commission members and employees are immune from liability related to their positions except in cases of wanton misconduct.
X	Data System	The Commission must provide for the development, operation, and maintenance of a coordinated database and reporting system (the data system) containing licensure, adverse action, and investigative information on all licensed professional counselors in member states. A member state must 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. 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. (See "Public Records/Open Meetings Issues" in Section IV of this analysis.)
XI	Rulemaking	The Commission shall adopt reasonable rules to effectively and efficiently achieve the purposes of the compact. If the commission issues a rule that exceeds its authority under the compact, such a rule is void and has no force or effect. Rules carry the force of law in all member states. If a majority of the legislatures of member states reject a rule by enactment of a statute or a resolution in the same manner used to adopt the compact within 4 years after the date of the adoption of a rule, such rule does not have further force or effect in any member state. Before adoption of a final rule by the commission, and at least 30 days in advance of the meeting at which the rule will be considered

Provisions of the Professional Counselors Licensure Compact		
Article	**Title**	**Description**
		and voted upon, the commission must file a notice of proposed rulemaking, which must include the text of the proposed rule, on the commission's website and on the website of each member state's professional licensing board. Interested persons may submit notice to the commission of their intention to attend a public hearing and may submit written comments before the commission may adopt a proposed rule. The commission must grant an opportunity for a public hearing if it is requested by at least 25 independent persons, a state or federal governmental subdivision or agency, or an association that has at least 25 members. Rules may be grouped at public hearings for the convenience of the commission. The commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing under certain circumstances.
XII	Oversight; Default, Technical Assistance, and Termination Dispute Resolution; and Enforcement	If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the compact or adopted rules, the commission must provide written notice, remedial training, and technical assistance to the state. If a state fails to cure a default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the member states and only after all other means of securing compliance have been exhausted. The commission shall attempt to resolve any compact-related disputes that may arise between states. The commission is responsible for enforcing the provisions and rules of the compact.
XIII	Date of Implementation of the Counseling Compact Commission and Associated Rules, Withdrawal, and Amendment	The compact becomes effective on the date on which the compact is enacted into law in the 10th member state. Thereafter, the commission must meet and exercise rulemaking powers necessary for the implementation and administration of the compact. States that join the compact after this date are subject to the rules of the commission as they exist on the date when the compact becomes law in that state. Member states withdraw from the compact by enacting a statute repealing the compact. *A state's withdrawal takes effect 6 months after enactment of the repealing statute.* The member states may amend the compact, but changes do not take effect until enacted into the laws of all member states.

Provisions of the Professional Counselors Licensure Compact		
Article	**Title**	**Description**
XIV	Binding Effect of Compact and Other Laws	A licensee providing professional counseling services in a remote state under the privilege to practice must adhere to the laws and regulations, including scope of practice, of the remote state. All rules and bylaws properly adopted by the commission are binding on the member states. *In the event of a conflict between a law of a member state and the compact, the state law is superseded to the extent of the conflict*.
IV	Construction and Severability	The compact is to be liberally construed so as to effectuate its purposes. The compact's provisions are severable. If a provision of the compact is declared to conflict with the United States Constitution, all other provisions remain valid for all member states. If a provision is held contrary to a member state's constitution, the compact retains its full force in all other states, and all other provisions remain valid in the affected state.

Section 491.004(5), F.S., requires the Board of Clinical Social Work, Marriage & Family Therapy, and Mental Health Counseling to adopt rules to implement and enforce the provisions of ch. 491, F.S. Section 1 of the bill creates s. 491.017, F.S., thereby requiring the Board to adopt rules to implement and enforce the compact.

Section 2 amends s. 456.073, F.S., to require the department to report any significant investigatory information relating to a health care practitioner practicing under the compact to the data system. Investigatory information is typically gathered as the department investigates complaints and assesses the need to discipline a licensee.

Section 3 amends s. 456.076, F.S., to require a consultant (who operates an approved impaired practitioner program) entering into a participant contract with an impaired practitioner who is practicing under the compact, to establish terms in the monitoring contract that include the impaired practitioner's withdrawal from all practice under the compact.

Section 4 amends s. 491.003, F.S., to amend the definitions section within the practice acts for mental health counselors, a clinical social workers, and marriage and family therapists to replace the words "intern" and "internship" with "associate" and "associateship," effective July 1, 2022.

Section 5 amends s. 491.004, F.S., to require the Board to appoint an individual to serve as the state's delegate on the commission.

Section 6 amends 491.0045, F.S., to amend a provision authorizing the Board to make a one-time exception for mental health counselor, clinical social worker, and marriage and family therapist intern registration requirements for emergency or hardship cases by removing the

requirement that the candidate pass the theory and practice examination described in s. 491.005(1)(d), (3)(d), and (4)(d), F.S., effective upon the date the act becomes a law.

Section 7 amends s. 491.005, F.S., to exempt a person licensed as a mental health counselor in another state who is practicing under the compact pursuant to s. 491.017, F.S., and only within the scope provided therein, from licensure by examination requirements, as applicable.

Section 8 amends s. 491.006, F.S., to exempt a person licensed as a mental health counselor in another state who is practicing under the compact pursuant to s. 491.017, F.S., and only within the scope provided therein, from licensure by endorsement requirements, as applicable.

Section 9 amends s. 491.009, F.S., to authorize the Board to take adverse action against a mental health counselor's privilege to practice under the compact and authorizes the Board impose grounds for discipline if the mental health counselor commits an act specified in subsection (1) of this section or in s. 456.072(1), F.S.

Section 10 amends s. 768.28, F.S., to designate as agents of the state, the individual appointed as the state's delegate on the commission when serving in that capacity, and any administrator, officer, executive director, employee, or representative of the commission, when acting within the scope of his or her employment, duties, or responsibilities in this state, for the purpose of applying waivers of sovereign immunity. This section also requires the commission to pay certain claims or judgments and authorizes the commission to maintain insurance coverage to pay such claims or judgments.

Section 11 requires the department to notify the Division of Law Revision upon the enactment of the compact into law by 10 states.

Sections 12 through 18 amend the practice acts for mental health counselors, a clinical social workers, and marriage and family therapists to replace the words "intern" and "internship" with "associate" and "associateship," effective July 1, 2022.

Section 19 provides an effective date contingent on the enactment of the compact into law by 10 states, except as otherwise expressly provided in the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

A counselor's personal identifying information, other than the counselor's name, licensure status, or licensure number, may be entered into the system by the Department of Health (department) or the Board or may be obtained by the department or the Board from the data system as reported by another state.

A meeting or a portion of a meeting of the commission, or the executive committee of the commission may be closed if the commission's legal counsel or designee has certified that the meeting may be closed because the commission or executive committee of the commission must discuss any of the following:

- 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.

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.

These issues are addressed in linked bill, SB 590.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, Section 19, of the State Constitution requires that the imposition of, or the authorization of, a new state tax or fee, as well as an increased state tax or fee, must be approved by two-thirds of the membership of each house of the Legislature and must be contained in a separate bill that contains no other subject. Article VII, Section 19(d)(1) of the State Constitution defines "fee" to mean "any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service." The bill authorizes the counseling compact commission and the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling to impose a new state tax or fee.

The bill authorizes member states to charge a fee for granting a privilege to practice in their state. The bill requires a licensee seeking to practice under the compact to pay any applicable fees, including any state fee, for the privilege to practice. The bill requires a compact counselor who changes his or her primary state of residence by moving between two member states to pay all applicable fees to his or her new home state.

The bill authorizes the commission to levy and collect an annual assessment from each member state or impose fees *on other parties* to cover the cost of the operations and activities of the commission and its staff. Such assessments and fees must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount must be allocated based on a formula to be determined by the commission, which must adopt a rule binding on all member states.

Section 491.004(5), F.S., requires the Board to adopt rules to implement and enforce the provisions of ch. 491, F.S. Section 1 of the bill creates the Professional Counseling Licensure Compact as s. 491.017, F.S., thereby requiring the Board to adopt rules to implement and enforce the compact, which may include the imposition of a fee for granting a privilege to practice in this state granting and a fee to cover the cost of the operations and activities of the commission, pursuant to the compact.

E. Other Constitutional Issues:

The compact authorizes the commission to "adopt reasonable rules to effectively and efficiently achieve the purposes of the compact," and these rules carry the force of law in member states, which is potentially an unlawful delegation of legislative authority. If enacted into law, the state will bind itself to rules not yet promulgated and adopted by the commission.

The Legislature delegated similar rulemaking powers to the Nurse Licensure Compact when it adopted the compact language into statute. The rules adopted by the Nurse Licensure Compact are now applicable to Florida without the Legislature's subsequent approval, similar to what the state would encounter with the counseling compact adoption and included rulemaking provision. In the case of the counseling compact, should Florida find that rules adopted by the commission are not acceptable, the compact provides a mechanism for a majority of state legislatures to override commission rules. Furthermore, the state maintains the ability to withdraw from the compact.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

PCS/CS/SB 358 authorizes the commission to levy and collect an annual assessment *from each member state* or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff. Such assessments and fees must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount must be allocated based on a formula to be determined by the commission, which must adopt a rule binding on all member states.

B. Private Sector Impact:

The bill could lead to more licensed mental health counselors practicing in Florida. It could also lead to more Florida-licensed mental health counselors practicing through telehealth and providing care to patients in other member states. The fiscal result to the private sector is indeterminate.

C. Government Sector Impact:[34]

The Department of Health (department) reports that its Division of Medical Quality Assurance (MQA) may experience an increase in revenues if the compact is enacted in Florida, as the bill authorizes member states to charge a fee for granting a privilege to practice under the compact. The number of applicants for compact licensure is indeterminate and a fiscal impact cannot be calculated.

MQA may experience a recurring increase in workload associated with processing applications and issuing initial and renewal licenses to participate in the compact. The department projects needing a minimum of one full-time equivalent (FTE), a Regulatory Specialist III (PG 19), with a projected cost of $71,147 ($48,963/Salary $21,878/Expense $306/HR).

MQA may experience a recurring increase in workload associated with the additional complaints and investigations due to the new compact license. At this time, the impact is indeterminate.

The bill authorizes the commission to levy and collect an annual assessment from each member state. The annual membership cost with the Licensed Professional Counselors Compact is unknown at this time, yet the department anticipates that existing budget authority is adequate to absorb this recurring cost.

If the bill is enacted and if the compact becomes effective, MQA will experience a non-recurring increase in workload and costs associated with updating the Licensing and Enforcement Information Database System, Online Service Portal, Cognitive Virtual Agent, Continuing Education Tracking System, License Verification Search Site, and board website to support multistate licensing. Additionally, MQA will be required to establish a process for sharing information with the data system and update existing data exchange services with the Agency for Health Care Administration.

The total estimated cost for the first year is $71,147 in the following categories:

- Salary- $48,963/Recurring
- Expense- $17,229/Recurring $4,649/Non-Recurring
- Human Resources - $306/Recurring

Section 491.004(5), F.S., requires the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling to adopt rules to implement and enforce the provisions of ch. 491, F.S. Section 1 of the bill creates the Professional Counseling Licensure Compact as s. 491.017, F.S., thereby requiring the Board to adopt rules to implement and enforce the compact, once it becomes effective.

VI. Technical Deficiencies:

None.

[34] *Supra* note 1.

VII. Related Issues:

The counseling compact model compact legislation[35] defines a "licensed professional counselor" as a counselor licensed by a member state, regardless of the title used by that State, to independently assess, diagnose, and treat behavioral health conditions." Under Florida law, a mental health counselor, clinical social worker, and a marriage and family therapist may be interpreted to fit the definition of a licensed professional counselor. For this reason, the bill defines a "licensed professional counselor" as "a mental health counselor licensed under chapter 491 or a counselor licensed by a member state, regardless of the title used by that state, to independently assess, diagnose, and treat behavioral health conditions."

This means that in Florida, only a licensed mental health counselor may apply for and be granted a privilege to practice in another member state. In other member states, a professional who meets that member state's definition of a licensed professional counselor, regardless of what title the professional holds, may apply for and be granted a privilege to practice in another member state. To be granted a privilege to practice under the compact, a licensed professional counselor applicant must pass a nationally recognized exam approved by the compact commission, have 60 hours of graduate coursework in specified topic areas or have a master's degree in counseling; and have completed supervised postgraduate professional experience as defined by the commission.

The bill acknowledges that a person from another member state who is granted a privilege to practice in Florida may be licensed as a practitioner other than a mental health counselor. If it is the intent that a licensed professional counselor be granted a privilege to practice in this state only if he or she holds a license that is substantially similar to that of a Florida mental health counselor, then this bill should be amended.

Statutes Affected:

This bill creates section 491.017 of the Florida Statutes.

This bill substantially amends the following sections of the Florida Statutes: 456.073, 456.076, 491.003, 491.004, 491.0045, 491.005, 491.006, 491.009, 491.012, 491.014, 491.0145, 491.0149 and 768.28.

[35] Counseling Compact, *Model Legislation* (Dec. 4, 2020) *available at* https://counselingcompact.org/wp-content/uploads/2021/06/Final_Counseling_Compact_With_Cover.pdf (last accessed Oct. 31, 2021).

VIII. Additional Information:

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

PCS 712708 by Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services:
The committee substitute:

- Revises the circumstances under which the compact commission or the executive committee of the commission may convene in a closed nonpublic meeting to align the provisions with the bill's public records companion, CS/CS/SB 590.
- Amends a provision authorizing the Board to make a one-time exception for mental health counselor, clinical social worker, and marriage and family therapist intern registration requirements for emergency or hardship cases by removing the requirement that the candidate pass a theory and practice examination, effective upon the act becoming a law.
- Amends the practice acts for mental health counselors, a clinical social workers, and marriage and family therapists to replace the words "intern" and "internship" with "associate" and "associateship," effective July 1, 2022.

CS by Health Policy on November 3, 2021:
The CS changes the effective date of the underlying bill from July 1, 2022, to reflect that the bill's provisions become effective only after the compact is enacted into law by 10 states. The CS also requires the Department of Health to notify the Division of Law Revision when the compact has been enacted into law by 10 states.

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

A bill to be entitled

An act relating to mental health professionals; creating s. 491.017, F.S.; creating the Professional Counselors Licensure Compact; providing purposes and objectives; defining terms; specifying requirements for state participation in the compact; specifying duties of member states; authorizing member states to charge a fee for granting a privilege to practice under the compact; specifying that that compact does not affect an individual's ability to apply for, and a member state's ability to grant, a single state license pursuant to the laws of that state; providing construction; providing for recognition of the privilege to practice licensed professional counseling in member states; specifying criteria a licensed professional counselor must meet for the privilege to practice under the compact; providing for the expiration and renewal of the privilege to practice; providing construction; specifying that a licensee with a privilege to practice in a remote state must adhere to the laws and rules of that state; authorizing member states to act on a licensee's privilege to practice under certain circumstances; specifying the consequences and parameters of practice for a licensee whose privilege to practice has been acted on or whose home state license is encumbered; specifying that a licensed professional counselor may

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hold a home state license in only one member state at a time; specifying requirements and procedures for changing a home state license designation; providing construction; authorizing active duty military personnel or their spouses to keep their home state designation during active duty; specifying how such individuals may subsequently change their home state license designation; providing for the recognition of the practice of professional counseling through telehealth in member states; specifying that licensees must adhere to the laws and rules of the remote state in which they provide professional counseling through telehealth; authorizing member states to take adverse actions against licensees and issue subpoenas for hearings and investigations under certain circumstances; providing requirements and procedures for adverse action; authorizing member states to engage in joint investigations under certain circumstances; providing that a licensee's privilege to practice must be deactivated in all member states for the duration of an encumbrance imposed by the licensee's home state; providing for notice to the data system and the licensee's home state of any adverse action taken against a licensee; providing construction; establishing the Counseling Compact Commission; providing for the jurisdiction and venue for court proceedings; providing construction; providing for membership, meetings, and powers of the commission; specifying powers and duties of the

commission's executive committee; providing for the financing of the commission; providing commission members, officers, executive directors, employees, and representatives immunity from civil liability under certain circumstances; providing exceptions; requiring the commission to defend the commission's members, officers, executive directors, employees, and representatives in civil actions under certain circumstances; providing construction; requiring the commission to indemnify and hold harmless such individuals for any settlement or judgment obtained in such actions under certain circumstances; providing for the development of the data system, reporting procedures, and the exchange of specified information between member states; requiring the commission to notify member states of any adverse action taken against a licensee or applicant for licensure; authorizing member states to designate as confidential information provided to the data system; requiring the commission to remove information from the data system under certain circumstances; providing rulemaking procedures for the commission; providing for member state enforcement of the compact; specifying that the compact and commission rules have standing as statutory law in member states; specifying that the commission is entitled to receive notice of process, and has standing to intervene, in certain judicial and administrative proceedings; rendering certain judgments and orders void as to the commission, the

compact, or commission rules under certain circumstances; providing for defaults and termination of compact membership; providing procedures for the resolution of certain disputes; providing for commission enforcement of the compact; providing for remedies; providing construction; providing for implementation of, withdrawal from, and amendment to the compact; providing construction; specifying that licensees practicing in a remote state under the compact must adhere to the laws and rules of the remote state; providing construction; specifying that the compact, commission rules, and commission actions are binding on member states; providing construction and severability; amending s. 456.073, F.S.; requiring the Department of Health to report certain investigative information to the data system; amending s. 456.076, F.S.; requiring monitoring contracts for impaired practitioners participating in treatment programs to contain certain terms; amending s. 491.003, F.S.; revising definitions; amending s. 491.004, F.S.; requiring the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling to appoint an individual to serve as the state's delegate on the commission; amending s. 491.0045, F.S.; revising circumstances under which the board may grant a certain one-time exemption from associate registration requirements; amending ss. 491.005 and 491.006, F.S.; exempting certain persons from mental health counselor licensure requirements;

amending s. 491.009, F.S.; authorizing certain disciplinary action under the compact for specified prohibited acts; amending s. 768.28, F.S.; designating the state delegate and other members or employees of the commission as state agents for the purpose of applying waivers of sovereign immunity; requiring the commission to pay certain claims or judgments; authorizing the commission to maintain insurance coverage to pay such claims or judgments; requiring the department to notify the Division of Law Revision upon enactment of the compact into law by 10 states; amending ss. 491.0045, 491.005, 491.009, 491.012, 491.014, 491.0145, and 491.0149, F.S.; conforming provisions to changes made by the act; providing effective dates.

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

Section 1. Section 491.017, Florida Statutes, is created to read:

491.017 Professional Counselors Licensure Compact.—The Professional Counselors Licensure Compact is hereby enacted and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I

PURPOSE

The compact is designed to achieve the following purposes and objectives:

(1) Facilitate interstate practice of licensed professional counseling to increase public access to professional counseling services by providing for the mutual recognition of other member state licenses.

(2) Enhance the member states' ability to protect the public's health and safety.

(3) Encourage the cooperation of member states in regulating multistate practice of licensed professional counselors.

(4) Support spouses of relocating active duty military personnel.

(5) Facilitate the exchange of information between member states regarding licensure, investigations, adverse actions, and disciplinary history of licensed professional counselors.

(6) Allow for the use of telehealth technology to facilitate increased access to professional counseling services.

(7) Support the uniformity of professional counseling licensure requirements throughout member states to promote public safety and public health benefits.

(8) Provide member states with the authority to hold a licensed professional counselor accountable for meeting all state practice laws in the state in which the client is located at the time care is rendered through the mutual recognition of member state licenses.

(9) Eliminate the necessity for licensed professional counselors to hold licenses in multiple states and provide opportunities for interstate practice by licensed professional counselors who meet uniform licensure requirements.

ARTICLE II

DEFINITIONS

As used in this compact, the term:

(1) "Active duty military" means full-time duty status in the active uniformed service of the United States, including, but not limited to, members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. chapters 1209 and 1211.

(2) "Adverse action" means any administrative, civil, or criminal action authorized by a state's laws which is imposed by a licensing board or other authority against a licensed professional counselor, including actions against an individual's license or privilege to practice, such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, issuance of a cease and desist action, or any other encumbrance on licensure affecting a licensed professional counselor's authorization to practice.

(3) "Alternative program" means a nondisciplinary monitoring or practice remediation process approved by a professional counseling licensing board to address impaired practitioners.

(4) "Continuing education" means a requirement, as a condition of license renewal, to participate in or complete educational and professional activities relevant to the licensee's practice or area of work.

(5) "Counseling Compact Commission" or "commission" means the national administrative body whose membership consists of all states that have enacted the compact.

(6) "Current significant investigative information" means:

(a) Investigative information that a licensing board, after

a preliminary inquiry that includes notification and an opportunity for the licensed professional counselor to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

(b) Investigative information that indicates that the licensed professional counselor represents an immediate threat to public health and safety, regardless of whether the licensed professional counselor has been notified and had an opportunity to respond.

(7) "Data system" means a repository of information about licensees, including, but not limited to, information relating to continuing education, examinations, licensure statuses, investigations, the privilege to practice, and adverse actions.

(8) "Encumbered license" means a license in which an adverse action restricts the practice of licensed professional counseling by the licensee and said adverse action has been reported to the National Practitioner Data Bank.

(9) "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of licensed professional counseling by a licensing board.

(10) "Executive committee" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.

(11) "Home state" means the member state that is the licensee's primary state of residence.

(12) "Impaired practitioner" means an individual who has a condition that may impair his or her ability to safely practice as a licensed professional counselor without intervention. Such

impairment may include, but is not limited to, alcohol or drug dependence, mental health conditions, and neurological or physical conditions.

(13) "Investigative information" means information, records, or documents received or generated by a professional counseling licensing board pursuant to an investigation.

(14) "Jurisprudence requirement," if required by a member state, means the assessment of an individual's knowledge of the laws and rules governing the practice of professional counseling in a state.

(15) "Licensed professional counselor" means a mental health counselor licensed under chapter 491 or a counselor licensed by a member state, regardless of the title used by that state, to independently assess, diagnose, and treat behavioral health conditions.

(16) "Licensee" means an individual who currently holds an authorization from the state to practice as a licensed professional counselor.

(17) "Licensing board" means the agency of a state, or equivalent, that is responsible for the licensing and regulation of licensed professional counselors.

(18) "Member state" means a state that has enacted the compact.

(19) "Privilege to practice" means a legal authorization, which is equivalent to a license, authorizing the practice of professional counseling in a remote state.

(20) "Professional counseling" means the assessment, diagnosis, and treatment of behavioral health conditions by a licensed professional counselor.

(21) "Remote state" means a member state, other than the home state, where a licensee is exercising or seeking to exercise the privilege to practice.

(22) "Rule" means a regulation adopted by the commission which has the force of law.

(23) "Single state license" means a licensed professional counselor license issued by a member state which authorizes practice only within the issuing state and does not include a privilege to practice in any other member state.

(24) "State" means any state, commonwealth, district, or territory of the United States of America which regulates the practice of professional counseling.

(25) "Telehealth" means the application of telecommunication technology to deliver professional counseling services remotely to assess, diagnose, and treat behavioral health conditions.

(26) "Unencumbered license" means a license that authorizes a licensed professional counselor to engage in the full and unrestricted practice of professional counseling.

ARTICLE III

STATE PARTICIPATION

(1) To participate in the compact, a state must currently do all of the following:

(a) License and regulate licensed professional counselors.

(b) Require licensees to pass a nationally recognized exam approved by the commission.

(c) Require licensees to have a 60 semester hour, or 90 quarter hour, master's degree in counseling or 60 semester

hours, or 90 quarter hours, of graduate coursework including all of the following topic areas:

1. Professional counseling orientation and ethical practice.

2. Social and cultural diversity.

3. Human growth and development.

4. Career development.

5. Counseling and helping relationships.

6. Group counseling and group work.

7. Diagnosis, assessment, testing, and treatment.

8. Research and program evaluation.

9. Other areas as determined by the commission.

(d) Require licensees to complete a supervised postgraduate professional experience as defined by the commission.

(e) Have a mechanism in place for receiving and investigating complaints about licensees.

(2) A member state shall do all of the following:

(a) Participate fully in the commission's data system, including using the commission's unique identifier as defined in rules adopted by the commission.

(b) Notify the commission, in compliance with the terms of the compact and rules adopted by the commission, of any adverse action or the availability of investigative information regarding a licensee.

(c) Implement or utilize procedures for considering the criminal history records of applicants for an initial privilege to practice. These procedures must include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history

record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records.

1. A member state must fully implement a criminal background check requirement, within a timeframe established by rule, by receiving the results of the Federal Bureau of Investigation record search and shall use the results in making licensure decisions.

2. Communication between a member state and the commission and among member states regarding the verification of eligibility for licensure through the compact may not include any information received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a member state under Public Law 92-544.

(d) Comply with the rules adopted by the commission.

(e) Require an applicant to obtain or retain a license in the home state and meet the home state's qualifications for licensure or renewal of licensure, as well as all other applicable state laws.

(f) Grant the privilege to practice to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the compact and rules adopted by the commission.

(g) Provide for the attendance of the state's commissioner at the commission meetings.

(3) Member states may charge a fee for granting the privilege to practice.

(4) Individuals not residing in a member state may continue to apply for a member state's single state license as provided

under the laws of each member state. However, the single state license granted to these individuals may not be recognized as granting a privilege to practice professional counseling under the compact in any other member state.

(5) Nothing in this compact affects the requirements established by a member state for the issuance of a single state license.

(6) A professional counselor license issued by a home state to a resident of that state must be recognized by each member state as authorizing that licensed professional counselor to practice professional counseling, under a privilege to practice, in each member state.

ARTICLE IV

PRIVILEGE TO PRACTICE

(1) To exercise the privilege to practice under the terms and provisions of the compact, the licensee must meet all of the following criteria:

(a) Hold a license in the home state.

(b) Have a valid United States Social Security Number or national provider identifier.

(c) Be eligible for a privilege to practice in any member state in accordance with subsections (4), (7), and (8).

(d) Have not had any encumbrance or restriction against any license or privilege to practice within the preceding 2 years.

(e) Notify the commission that the licensee is seeking the privilege to practice within a remote state.

(f) Pay any applicable fees, including any state fee, for the privilege to practice.

(g) Meet any continuing education requirements established by the home state.

(h) Meet any jurisprudence requirements established by the remote state in which the licensee is seeking a privilege to practice.

(i) Report to the commission any adverse action, encumbrance, or restriction on a license taken by any nonmember state within 30 days after the action is taken.

(2) The privilege to practice is valid until the expiration date of the home state license. The licensee must continue to meet the criteria specified in subsection (1) to renew the privilege to practice in the remote state.

(3) For purposes of the compact, the practice of professional counseling occurs in the state where the client is located at the time of the counseling services. The compact does not affect the regulatory authority of states to protect public health and safety through their own system of state licensure.

(4) A licensee providing professional counseling in a remote state under the privilege to practice must adhere to the laws and regulations of the remote state.

(5) A licensee providing professional counseling services in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's privilege to practice in the remote state for a specified period of time, impose fines, or take any other action necessary to protect the health and safety of its residents. The licensee may be ineligible for a privilege to practice in any member state until the specific time for removal has passed and all fines are paid.

(6) If a home state license is encumbered, a licensee loses the privilege to practice in any remote state until both of the following conditions are met:

(a) The home state license is no longer encumbered.

(b) The licensee has not had any encumbrance or restriction against any license or privilege to practice within the preceding 2 years.

(7) Once an encumbered license in the licensee's home state is restored to good standing, the licensee may obtain a privilege to practice in any remote state if he or she meets the requirements of subsection (1).

(8) If a licensee's privilege to practice in any remote state is removed, the individual may lose the privilege to practice in all other remote states until all of the following conditions are met:

(a) The specified period of time for which the privilege to practice was removed has ended.

(b) The licensee has paid all fines imposed.

(c) The licensee has not had any encumbrance or restriction against any license or privilege to practice within the preceding 2 years.

(9) Once the requirements of subsection (8) have been met, the licensee may obtain a privilege to practice in a remote state if he or she meets the requirements in subsection (1).

ARTICLE V

OBTAINING A NEW HOME STATE LICENSE BASED ON A PRIVILEGE TO PRACTICE

(1) A licensed professional counselor may hold a home state

license, which allows for a privilege to practice in other member states, in only one member state at a time.

(2) If a licensed professional counselor changes his or her primary state of residence by moving between two member states, then the licensed professional counselor must file an application for obtaining a new home state license based on a privilege to practice, pay all applicable fees, and notify the current and new home state in accordance with applicable rules adopted by the commission.

(3) Upon receipt of an application for obtaining a new home state license based on a privilege to practice, the new home state must verify that the licensed professional counselor meets the criteria outlined in article IV through the data system. The new home state does not need to seek primary source verification for information obtained from the data system, except for the following:

(a) A Federal Bureau of Investigation fingerprint-based criminal background check, if not previously performed or updated pursuant to applicable rules adopted by the commission in accordance with Public Law 92-544;

(b) Any other criminal background check as required by the new home state; and

(c) Proof of completion of any requisite jurisprudence requirements of the new home state.

(4) The former home state shall convert the former home state license into a privilege to practice once the new home state has activated the new home state license in accordance with applicable rules adopted by the commission.

(5) Notwithstanding any other provision of the compact, if

the licensed professional counselor does not meet the criteria in article IV, the new home state may apply its own requirements for issuing a new single state license.

(6) The licensed professional counselor must pay all applicable fees to the new home state in order to be issued a new home state license for purposes of the compact.

(7) If a licensed professional counselor changes his or her primary state of residence by moving from a member state to a nonmember state or from a nonmember state to a member state, the new state's own criteria apply for issuance of a single state license in the new state.

(8) The compact does not interfere with a licensee's ability to hold a single state license in multiple states. However, for the purposes of the compact, a licensee may have only one home state license.

(9) The compact does not affect the requirements established by a member state for the issuance of a single state license.

ARTICLE VI

ACTIVE DUTY MILITARY PERSONNEL AND THEIR SPOUSES

Active duty military personnel, or their spouse, shall designate a home state where the individual has a current license in good standing. The individual may retain the home state license designation during the period the service member is on active duty. Subsequent to designating a home state, the individual may change his or her home state only through application for licensure in the new state or through the process outlined in article V.

ARTICLE VII

COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

(1) Member states shall recognize the right of a licensed professional counselor, licensed by a home state in accordance with article III and under rules adopted by the commission, to practice professional counseling in any member state through telehealth under a privilege to practice as provided in the compact and rules adopted by the commission.

(2) A licensee providing professional counseling services in a remote state through telehealth under the privilege to practice must adhere to the laws and rules of the remote state.

ARTICLE VIII

ADVERSE ACTIONS

(1) In addition to the other powers conferred by state law, a remote state has the authority, in accordance with existing state due process law, to do any of the following:

(a) Take adverse action against a licensed professional counselor's privilege to practice within that member state.

(b) Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses or the production of evidence. Subpoenas issued by a licensing board in a member state for the attendance and testimony of witnesses or the production of evidence from another member state must be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees,

travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses or evidence is located.

(2) Only the home state has the power to take adverse action against a licensed professional counselor's license issued by the home state.

(3) For purposes of taking adverse action, the home state shall give the same priority and effect to reported conduct received from a member state as it would if the conduct had occurred within the home state. The home state shall apply its own state laws to determine appropriate action in such cases.

(4) The home state shall complete any pending investigations of a licensed professional counselor who changes primary state of residence during the course of the investigations. The home state may also take appropriate action and shall promptly report the conclusions of the investigations to the administrator of the data system. The administrator of the data system shall promptly notify the new home state of any adverse actions.

(5) A member state, if authorized by state law, may recover from the affected licensed professional counselor the costs of investigations and dispositions of any cases resulting from adverse action taken against that licensed professional counselor.

(6) A member state may take adverse action against a licensed professional counselor based on the factual findings of a remote state, provided that the member state follows its own statutory procedures for taking adverse action.

(7)(a) In addition to the authority granted to a member

state by its respective professional counseling practice act or other applicable state law, any member state may participate with other member states in joint investigations of licensees.

(b) Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.

(8) If adverse action is taken by the home state against the license of a professional counselor, the licensed professional counselor's privilege to practice in all other member states must be deactivated until all encumbrances have been removed from the home state license. All home state disciplinary orders that impose adverse action against the license of a professional counselor must include a statement that the licensed professional counselor's privilege to practice is deactivated in all member states while the order is in effect.

(9) If a member state takes adverse action, it must promptly notify the administrator of the data system. The administrator shall promptly notify the licensee's home state of any adverse actions by remote states.

(10) Nothing in the compact overrides a member state's decision to allow a licensed professional counselor to participate in an alternative program in lieu of adverse action.

ARTICLE IX

ESTABLISHMENT OF COUNSELING COMPACT COMMISSION

(1) COMMISSION CREATED.—The compact member states hereby create and establish a joint public agency known as the Counseling Compact Commission.

(a) The commission is an instrumentality of the compact states.

(b) Venue is proper, and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent that it adopts or consents to participate in alternative dispute resolution proceedings.

(c) Nothing in the compact may be construed to be a waiver of sovereign immunity.

(2) MEMBERSHIP.—

(a) The commission shall consist of one voting delegate, appointed by each member state's licensing board. The commission, by rule, shall establish a term of office for delegates and may establish term limits.

(b) The delegate must be either:

1. A current member of the licensing board at the time of appointment, who is a licensed professional counselor or public member; or

2. An administrator of the licensing board.

(c) A delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

(d) The member state licensing board must fill any vacancy occurring on the commission within 60 days.

(e) Each delegate is entitled to one vote with regard to the adoption of rules and creation of bylaws and shall otherwise participate in the business and affairs of the commission.

(f) A delegate shall vote in person or by such other means

as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

(3) MEETINGS OF THE COMMISSION.—

(a) The commission shall meet at least once during each calendar year. Additional meetings must be held as set forth in the bylaws.

(b) All meetings must be open to the public, and public notice of meetings must be given in the same manner as required under the rulemaking provisions in article XI.

(c) The commission or the executive committee of the commission may convene in a closed nonpublic meeting 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.

(d) If a meeting, or portion of a meeting, is closed under

this subsection, the commission's legal counsel or designee must certify that the meeting may be closed and must reference each relevant exempting provision.

(e) 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.

(4) POWERS.—The commission may do any of the following:

(a) Establish the fiscal year of the commission.

(b) Establish bylaws.

(c) Maintain its financial records in accordance with the bylaws.

(d) Meet and take actions that are consistent with the compact and bylaws.

(e) Adopt rules that are binding to the extent and in the manner provided for in the compact.

(f) Initiate and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state licensing board to sue or be sued under applicable law is not affected.

(g) Purchase and maintain insurance and bonds.

(h) Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state.

(i) Hire employees and elect or appoint officers; fix

compensation for, define duties of, and grant appropriate authority to such employees and officers to carry out the purposes of the compact; and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters.

(j) Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and receive, utilize, and dispose of the same, provided that at all times the commission avoids any appearance of impropriety or conflict of interest.

(k) Lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold, improve, or use, any property, real, personal, or mixed, provided that at all times the commission avoids any appearance of impropriety or conflict of interest.

(l) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(m) Establish a budget and make expenditures.

(n) Borrow money.

(o) Appoint committees, including standing committees consisting of commission members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in the compact and bylaws.

(p) Provide information to, receive information from, and cooperate with law enforcement agencies.

(q) Establish and elect an executive committee.

(r) Perform any other function that may be necessary or

appropriate to achieve the purposes of the compact and is consistent with the state regulation of professional counseling licensure and practice.

(5) THE EXECUTIVE COMMITTEE.—

(a) The executive committee may act on behalf of the commission according to the terms of the compact and shall consist of up to 11 members, as follows:

1. Seven voting members who are elected by the commission from the current membership of the commission.

2. Up to four ex officio, nonvoting members from four recognized national professional counselor organizations. The ex officio members shall be selected by their respective organizations.

(b) The commission may remove any member of the executive committee as provided in its bylaws.

(c) The executive committee shall meet at least annually.

(d) The executive committee shall do all of the following:

1. Make recommendations to the commission for any changes to the rules, bylaws, or compact legislation; fees paid by compact member states; and any fees charged to licensees for the privilege to practice.

2. Ensure compact administration services are appropriately provided, contractually or otherwise.

3. Prepare and recommend the budget.

4. Maintain financial records on behalf of the commission.

5. Monitor compact compliance of member states and provide compliance reports to the commission.

6. Establish additional committees as necessary.

7. Perform any other duties provided for in the rules or

bylaws.

(6) FINANCING OF THE COMMISSION.—

(a) The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The commission may accept any appropriate revenue sources, donations, or grants of money, equipment, supplies, materials, or services.

(c) The commission may levy and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff. Such assessments and fees must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount must be allocated based on a formula to be determined by the commission, which shall adopt a rule binding on all member states.

(d) The commission may not incur obligations of any kind before securing the funds adequate to meet the same; nor may the commission pledge the credit of any of the member states, except by and with the authority of the member state.

(e) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission must be audited annually by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the commission.

(7) QUALIFIED IMMUNITY, DEFENSE, AND INDEMNIFICATION.—

(a) The members, officers, executive director, employees, and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities. This paragraph may not be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

(b) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct. This paragraph may not be construed to prohibit that person from retaining his or her own counsel.

(c) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred, or that such

person had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

ARTICLE X

DATA SYSTEM

(1) The commission shall provide for the development, operation, and maintenance of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed professional counselors in member states.

(2) 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:

(a) Identifying information.

(b) Licensure data.

(c) Adverse actions against a license or privilege to practice.

(d) Nonconfidential information related to alternative program participation.

(e) Any denial of application for licensure and the reason for such denial.

(f) Current significant investigative information.

(g) Other information that may facilitate the administration of the compact, as determined by the rules of the

commission.

(3) Investigative information pertaining to a licensee in any member state may be made available only to other member states.

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

(5) 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.

(6) Any information submitted to the data system which is subsequently required to be expunged by the laws of the member state reporting the information must be removed from the data system.

ARTICLE XI

RULEMAKING

(1) The commission shall adopt reasonable rules to effectively and efficiently achieve the purposes of the compact. If, however, the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the compact, or the powers granted hereunder, then such an action by the commission is invalid and has no force or effect.

(2) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted thereunder. Rules and amendments become binding as of the date specified in each rule or amendment.

(3) If a majority of the legislatures of the member states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact within 4 years after the date of adoption of the rule, such rule does not have further force and effect in any member state.

(4) Rules or amendments to the rules must be adopted at a regular or special meeting of the commission.

(5) Before adoption of a final rule by the commission, and at least 30 days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:

(a) On the website of the commission or other publicly accessible platform; and

(b) On the website of each member state's professional counseling licensing board or other publicly accessible platform or in the publication in which each state would otherwise publish proposed rules.

(6) The notice of proposed rulemaking must include:

(a) The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

(b) The text of the proposed rule or amendment and the reason for the proposed rule;

(c) A request for comments on the proposed rule from any interested person; and

(d) The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

(7) Before adoption of a proposed rule, the commission must allow persons to submit written data, facts, opinions, and

arguments, which must be made available to the public.

(8) The commission shall grant an opportunity for a public hearing before it adopts a rule or an amendment if a hearing is requested by:

(a) At least 25 persons who submit comments independently of each other;

(b) A state or federal governmental subdivision or agency; or

(c) An association that has at least 25 members.

(9) If a hearing is held on the proposed rule or amendment, the commission must publish the place, time, and date of the scheduled public hearing. If the hearing is held through electronic means, the commission must publish the mechanism for access to the electronic hearing.

(a) All persons wishing to be heard at the hearing must notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing at least 5 business days before the scheduled date of the hearing.

(b) Hearings must be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

(c) All hearings must be recorded. A copy of the recording must be made available on request.

(d) This section may not be construed to require a separate hearing on each rule. Rules may be grouped at hearings required by this section for the convenience of the commission.

(10) If the commission does not receive a written notice of intent to attend the public hearing by interested parties, the

commission may proceed with adoption of the proposed rule without a public hearing.

(11) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

(12) The commission, by majority vote of all members, shall take final action on the proposed rule and shall determine the effective date of the rule based on the rulemaking record and the full text of the rule.

(13) Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the compact and in this section are retroactively applied to the rule as soon as reasonably possible, but no later than 90 days after the effective date of the rule. For purposes of this subsection, an emergency rule is one that must be adopted immediately in order to:

(a) Meet an imminent threat to public health, safety, or welfare;

(b) Prevent a loss of commission or member state funds;

(c) Meet a deadline for the adoption of an administrative rule established by federal law or rule; or

(d) Protect public health and safety.

(14) The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors.

Public notice of any revision must be posted on the website of the commission. Revisions are subject to challenge by any person for a period of 30 days after posting. A revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge must be made in writing and delivered to the chair of the commission before the end of the notice period. If a challenge is not made, the revision takes effect without further action. If a revision is challenged, the revision may not take effect without the approval of the commission.

ARTICLE XII

OVERSIGHT; DEFAULT, TECHNICAL ASSISTANCE, AND TERMINATION; DISPUTE RESOLUTION; AND ENFORCEMENT

(1) OVERSIGHT.—

(a) The executive, legislative, and judicial branches of state government in each member state shall enforce the compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The compact and the rules adopted thereunder have standing as statutory law.

(b) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of the compact which may affect the powers, responsibilities, or actions of the commission.

(c) The commission is entitled to receive service of process in any judicial or administrative proceeding specified in paragraph (b) and has standing to intervene in such a proceeding for all purposes. Failure to provide service of

process to the commission renders a judgment or an order void as to the commission, the compact, or adopted rules.

(2) DEFAULT, TECHNICAL ASSISTANCE, AND TERMINATION.—

(a) If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the compact or adopted rules, the commission must:

1. Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default, and any other action to be taken by the commission; and

2. Provide remedial training and specific technical assistance regarding the default.

(b) If a state in default fails to cure the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the member states, and all rights, privileges, and benefits conferred by the compact are terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

(c) Termination of membership in the compact may be imposed only after all other means of securing compliance have been exhausted. The commission shall submit a notice of intent to suspend or terminate a defaulting member state to that state's governor, to the majority and minority leaders of that state's legislature, and to each member state.

(d) A member state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations

that extend beyond the effective date of termination.

(e) The commission may not bear any costs related to a member state that is found to be in default or that has been terminated from the compact, unless agreed upon in writing between the commission and the defaulting member state.

(f) The defaulting member state may appeal the action of the commission by petitioning the United States District Court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing party must be awarded all costs of such litigation, including reasonable attorney fees.

(3) DISPUTE RESOLUTION.—

(a) Upon request by a member state, the commission shall attempt to resolve disputes related to the compact which arise among member states and between member and nonmember states.

(b) The commission shall adopt rules providing for both mediation and binding dispute resolution for disputes as appropriate.

(4) ENFORCEMENT.—

(a) The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of the compact.

(b) By majority vote, the commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the compact and its adopted rules and bylaws. The relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing

party must be awarded all costs of such litigation, including reasonable attorney fees.

(c) The remedies under this article are not the exclusive remedies to the commission. The commission may pursue any other remedies available under federal or state law.

ARTICLE XIII
DATE OF IMPLEMENTATION OF THE COUNSELING COMPACT COMMISSION AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

(1) The compact becomes effective on the date on which the compact is enacted into law in the 10th member state. The provisions that become effective at that time are limited to the powers granted to the commission relating to assembly and the adoption of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary for implementation and administration of the compact.

(2) Any state that joins the compact subsequent to the commission's initial adoption of the rules is subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission has the full force and effect of law on the day the compact becomes law in that state.

(3) Any member state may withdraw from the compact by enacting a statute repealing the compact.

(a) A member state's withdrawal does not take effect until 6 months after enactment of the repealing statute.

(b) Withdrawal does not affect the continuing requirement of the withdrawing state's professional counseling licensing board to comply with the investigative and adverse action

reporting requirements of the compact before the effective date of withdrawal.

(4) The compact may not be construed to invalidate or prevent any professional counseling licensure agreement or other cooperative arrangement between a member state and a nonmember state which does not conflict with the compact.

(5) The compact may be amended by the member states. An amendment to the compact is not effective and binding upon any member state until it is enacted into the laws of all member states.

ARTICLE XIV

BINDING EFFECT OF COMPACT AND OTHER LAWS

(1) A licensee providing professional counseling services in a remote state under the privilege to practice shall adhere to the laws and regulations, including scope of practice, of the remote state.

(2) The compact does not prevent the enforcement of any other law of a member state which is not inconsistent with the compact.

(3) Any laws in a member state which conflict with the compact are superseded to the extent of the conflict.

(4) Any lawful actions of the commission, including all rules and bylaws properly adopted by the commission, are binding on the member states.

(5) All permissible agreements between the commission and the member states are binding in accordance with their terms.

(6) If any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, the provision shall be ineffective to the extent of the

conflict with the constitutional provision in question in that member state.

ARTICLE XV

CONSTRUCTION AND SEVERABILITY

The compact must be liberally construed so as to effectuate the purposes thereof. The provisions of the compact are severable, and if any phrase, clause, sentence, or provision of the compact is declared to be contrary to the constitution of any member state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of the compact and the applicability thereof to any government, agency, person, or circumstance is not affected thereby. If the compact is held contrary to the constitution of any member state, the compact remains in full force and effect as to the remaining member states and in full force and effect as to the member state affected as to all severable matters.

Section 2. Subsection (10) of section 456.073, Florida Statutes, is amended to read:

456.073 Disciplinary proceedings.—Disciplinary proceedings for each board shall be within the jurisdiction of the department.

(10) The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from s. 119.07(1) until 10 days after probable cause has been found to exist by the probable cause panel or by the department, or until the regulated professional or subject of the investigation waives his or her privilege of confidentiality,

whichever occurs first. The department shall report any significant investigation information relating to a nurse holding a multistate license to the coordinated licensure information system pursuant to s. 464.0095, and any significant investigatory information relating to a health care practitioner practicing under the Professional Counselors Licensure Compact to the data system pursuant to s. 491.017 instead of this subsection. Upon completion of the investigation and a recommendation by the department to find probable cause, and pursuant to a written request by the subject or the subject's attorney, the department shall provide the subject an opportunity to inspect the investigative file or, at the subject's expense, forward to the subject a copy of the investigative file. Notwithstanding s. 456.057, the subject may inspect or receive a copy of any expert witness report or patient record connected with the investigation if the subject agrees in writing to maintain the confidentiality of any information received under this subsection until 10 days after probable cause is found and to maintain the confidentiality of patient records pursuant to s. 456.057. The subject may file a written response to the information contained in the investigative file. Such response must be filed within 20 days of mailing by the department, unless an extension of time has been granted by the department. This subsection does not prohibit the department from providing such information to any law enforcement agency or to any other regulatory agency.

Section 3. Subsection (5) of section 456.076, Florida Statutes, is amended to read:

456.076 Impaired practitioner programs.—

(5) A consultant shall enter into a participant contract with an impaired practitioner and shall establish the terms of monitoring and shall include the terms in a participant contract. In establishing the terms of monitoring, the consultant may consider the recommendations of one or more approved evaluators, treatment programs, or treatment providers. A consultant may modify the terms of monitoring if the consultant concludes, through the course of monitoring, that extended, additional, or amended terms of monitoring are required for the protection of the health, safety, and welfare of the public. If the impaired practitioner is a health care practitioner practicing under the Professional Counselors Licensure Compact pursuant to s. 491.017, the terms of the monitoring contract must include the impaired practitioner's withdrawal from all practice under the compact in this state.

Section 4. Effective July 1, 2022, subsections (14), (15), and (16) of section 491.003, Florida Statutes, are amended to read:

491.003 Definitions.—As used in this chapter:

(14) "Registered associate clinical social worker ~~intern~~" means a person registered under this chapter who is completing the postgraduate clinical social work experience requirement specified in s. 491.005(1)(c).

(15) "Registered associate marriage and family therapist ~~intern~~" means a person registered under this chapter who is completing the post-master's clinical experience requirement specified in s. 491.005(3)(c).

(16) "Registered associate mental health counselor ~~intern~~" means a person registered under this chapter who is completing

the post-master's clinical experience requirement specified in s. 491.005(4)(c).

Section 5. Subsection (8) is added to section 491.004, Florida Statutes, to read:

491.004 Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling.—

(8) The board shall appoint an individual to serve as the state's delegate on the Counseling Compact Commission, as required under s. 491.017.

Section 6. Effective upon this act becoming a law, subsection (6) of section 491.0045, Florida Statutes, is amended to read:

491.0045 Intern registration; requirements.—

(6) A registration issued on or before March 31, 2017, expires March 31, 2022, and may not be renewed or reissued. Any registration issued after March 31, 2017, expires 60 months after the date it is issued. The board may make a one-time exception to the requirements of this subsection in emergency or hardship cases, as defined by board rule~~, if the candidate has passed the theory and practice examination described in s. 491.005(1)(d), (3)(d), and (4)(d)~~.

Section 7. Subsection (6) is added to section 491.005, Florida Statutes, to read:

491.005 Licensure by examination.—

(6) EXEMPTION.—A person licensed as a mental health counselor in another state who is practicing under the Professional Counselors Licensure Compact pursuant to s. 491.017, and only within the scope provided therein, is exempt from the licensure requirements of this section, as applicable.

Section 8. Subsection (3) is added to section 491.006, Florida Statutes, to read:

491.006 Licensure or certification by endorsement.—

(3) A person licensed as a mental health counselor in another state who is practicing under the Professional Counselors Licensure Compact pursuant to s. 491.017, and only within the scope provided therein, is exempt from the licensure requirements of this section, as applicable.

Section 9. Section 491.009, Florida Statutes, is amended to read:

491.009 Discipline.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2) or s. 491.017:

(a) Attempting to obtain, obtaining, or renewing a license, registration, or certificate under this chapter by bribery or fraudulent misrepresentation or through an error of the board or the department.

(b) Having a license, registration, or certificate to practice a comparable profession revoked, suspended, or otherwise acted against, including the denial of certification or licensure by another state, territory, or country.

(c) Being convicted or found guilty of, regardless of adjudication, or having entered a plea of nolo contendere to, a crime in any jurisdiction which directly relates to the practice of his or her profession or the ability to practice his or her profession. However, in the case of a plea of nolo contendere, the board shall allow the person who is the subject of the disciplinary proceeding to present evidence in mitigation

relevant to the underlying charges and circumstances surrounding the plea.

(d) False, deceptive, or misleading advertising or obtaining a fee or other thing of value on the representation that beneficial results from any treatment will be guaranteed.

(e) Advertising, practicing, or attempting to practice under a name other than one's own.

(f) Maintaining a professional association with any person who the applicant, licensee, registered intern, or certificateholder knows, or has reason to believe, is in violation of this chapter or of a rule of the department or the board.

(g) Knowingly aiding, assisting, procuring, or advising any nonlicensed, nonregistered, or noncertified person to hold himself or herself out as licensed, registered, or certified under this chapter.

(h) Failing to perform any statutory or legal obligation placed upon a person licensed, registered, or certified under this chapter.

(i) Willfully making or filing a false report or record; failing to file a report or record required by state or federal law; willfully impeding or obstructing the filing of a report or record; or inducing another person to make or file a false report or record or to impede or obstruct the filing of a report or record. Such report or record includes only a report or record which requires the signature of a person licensed, registered, or certified under this chapter.

(j) Paying a kickback, rebate, bonus, or other remuneration for receiving a patient or client, or receiving a kickback,

rebate, bonus, or other remuneration for referring a patient or client to another provider of mental health care services or to a provider of health care services or goods; referring a patient or client to oneself for services on a fee-paid basis when those services are already being paid for by some other public or private entity; or entering into a reciprocal referral agreement.

(k) Committing any act upon a patient or client which would constitute sexual battery or which would constitute sexual misconduct as defined pursuant to s. 491.0111.

(l) Making misleading, deceptive, untrue, or fraudulent representations in the practice of any profession licensed, registered, or certified under this chapter.

(m) Soliciting patients or clients personally, or through an agent, through the use of fraud, intimidation, undue influence, or a form of overreaching or vexatious conduct.

(n) Failing to make available to a patient or client, upon written request, copies of tests, reports, or documents in the possession or under the control of the licensee, registered intern, or certificateholder which have been prepared for and paid for by the patient or client.

(o) Failing to respond within 30 days to a written communication from the department or the board concerning any investigation by the department or the board, or failing to make available any relevant records with respect to any investigation about the licensee's, registered intern's, or certificateholder's conduct or background.

(p) Being unable to practice the profession for which he or she is licensed, registered, or certified under this chapter

with reasonable skill or competence as a result of any mental or physical condition or by reason of illness; drunkenness; or excessive use of drugs, narcotics, chemicals, or any other substance. In enforcing this paragraph, upon a finding by the State Surgeon General, the State Surgeon General's designee, or the board that probable cause exists to believe that the licensee, registered intern, or certificateholder is unable to practice the profession because of the reasons stated in this paragraph, the department shall have the authority to compel a licensee, registered intern, or certificateholder to submit to a mental or physical examination by psychologists, physicians, or other licensees under this chapter, designated by the department or board. If the licensee, registered intern, or certificateholder refuses to comply with such order, the department's order directing the examination may be enforced by filing a petition for enforcement in the circuit court in the circuit in which the licensee, registered intern, or certificateholder resides or does business. The licensee, registered intern, or certificateholder against whom the petition is filed may ~~shall~~ not be named or identified by initials in any public court records or documents, and the proceedings shall be closed to the public. The department shall be entitled to the summary procedure provided in s. 51.011. A licensee, registered intern, or certificateholder affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume the competent practice for which he or she is licensed, registered, or certified with reasonable skill and safety to patients.

(q) Performing any treatment or prescribing any therapy

which, by the prevailing standards of the mental health professions in the community, would constitute experimentation on human subjects, without first obtaining full, informed, and written consent.

(r) Failing to meet the minimum standards of performance in professional activities when measured against generally prevailing peer performance, including the undertaking of activities for which the licensee, registered intern, or certificateholder is not qualified by training or experience.

(s) Delegating professional responsibilities to a person whom the licensee, registered intern, or certificateholder knows or has reason to know is not qualified by training or experience to perform such responsibilities.

(t) Violating a rule relating to the regulation of the profession or a lawful order of the department or the board previously entered in a disciplinary hearing.

(u) Failure of the licensee, registered intern, or certificateholder to maintain in confidence a communication made by a patient or client in the context of such services, except as provided in s. 491.0147.

(v) Making public statements which are derived from test data, client contacts, or behavioral research and which identify or damage research subjects or clients.

(w) Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

(2)(a) The board or, in the case of certified master social workers, the department may enter an order denying licensure or imposing any of the penalties authorized in s. 456.072(2) against any applicant for licensure or any licensee who violates

subsection (1) or s. 456.072(1).

(b) The board may take adverse action against a mental health counselor's privilege to practice under the Professional Counselors Licensure Compact pursuant to s. 491.017 and may impose any of the penalties in s. 456.072(2) if the mental health counselor commits an act specified in subsection (1) or s. 456.072(1).

Section 10. Paragraph (h) is added to subsection (10) of section 768.28, Florida Statutes, to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; civil liability for damages caused during a riot; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(10)

(h) For purposes of this section, the individual appointed under s. 491.004(8) as the state's delegate on the Counseling Compact Commission, when serving in that capacity pursuant to s. 491.017, and any administrator, officer, executive director, employee, or representative of the commission, when acting within the scope of his or her employment, duties, or responsibilities in this state, is considered an agent of the state. The commission shall pay any claims or judgments pursuant to this section and may maintain insurance coverage to pay any such claims or judgments.

Section 11. The Department of Health shall notify the Division of Law Revision upon enactment of the Professional Counselors Licensure Compact into law by 10 states.

Section 12. Effective July 1, 2022, section 491.0045, Florida Statutes, as amended by this act, is amended to read:

491.0045 Associate ~~Intern~~ registration; requirements.—

(1) An individual who has not satisfied the postgraduate or post-master's level experience requirements, as specified in s. 491.005(1)(c), (3)(c), or (4)(c), must register as an associate ~~intern~~ in the profession for which he or she is seeking licensure before commencing the post-master's experience requirement or an individual who intends to satisfy part of the required graduate-level practicum, associateship ~~internship~~, or field experience, outside the academic arena for any profession, and must register as an associate ~~intern~~ in the profession for which he or she is seeking licensure before commencing the practicum, associateship ~~internship~~, or field experience.

(2) The department shall register as an associate ~~a~~ clinical social worker ~~intern~~, associate marriage and family therapist ~~intern~~, or associate mental health counselor ~~intern~~ each applicant who the board certifies has:

(a) Completed the application form and remitted a nonrefundable application fee not to exceed $200, as set by board rule;

(b)1. Completed the education requirements as specified in s. 491.005(1)(c), (3)(c), or (4)(c) for the profession for which he or she is applying for licensure, if needed; and

2. Submitted an acceptable supervision plan, as determined by the board, for meeting the practicum, associateship ~~internship~~, or field work required for licensure that was not satisfied in his or her graduate program.

(c) Identified a qualified supervisor.

(3) An individual registered under this section must remain under supervision while practicing under registered associate

~~intern~~ status.

(4) An individual who fails to comply with this section may not be granted a license under this chapter, and any time spent by the individual completing the experience requirement as specified in s. 491.005(1)(c), (3)(c), or (4)(c) before registering as an associate ~~intern~~ does not count toward completion of the requirement.

(5) An associate ~~intern~~ registration is valid for 5 years.

(6) A registration issued on or before March 31, 2017, expires March 31, 2022, and may not be renewed or reissued. Any registration issued after March 31, 2017, expires 60 months after the date it is issued. The board may make a one-time exception to the requirements of this subsection in emergency or hardship cases, as defined by board rule.

(7) An individual who has held a provisional license issued by the board may not apply for an associate ~~intern~~ registration in the same profession.

Section 13. Effective July 1, 2022, paragraph (c) of subsection (1), paragraph (c) of subsection (3), and paragraphs (b) and (c) of subsection (4) of section 491.005, Florida Statutes, are amended to read:

491.005 Licensure by examination.—

(1) CLINICAL SOCIAL WORK.—Upon verification of documentation and payment of a fee not to exceed $200, as set by board rule, plus the actual per applicant cost to the department for purchase of the examination from the American Association of State Social Worker's Boards or a similar national organization, the department shall issue a license as a clinical social worker to an applicant who the board certifies:

(c) Has had at least 2 years of clinical social work experience, which took place subsequent to completion of a graduate degree in social work at an institution meeting the accreditation requirements of this section, under the supervision of a licensed clinical social worker or the equivalent who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy clinical experience requirements must register pursuant to s. 491.0045 before commencing practice. If the applicant's graduate program was not a program which emphasized direct clinical patient or client health care services as described in subparagraph (b)2., the supervised experience requirement must take place after the applicant has completed a minimum of 15 semester hours or 22 quarter hours of the coursework required. A doctoral associateship ~~internship~~ may be applied toward the clinical social work experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered associate ~~intern~~ in a private practice setting.

(3) MARRIAGE AND FAMILY THERAPY.—Upon verification of documentation and payment of a fee not to exceed $200, as set by board rule, plus the actual cost of the purchase of the examination from the Association of Marital and Family Therapy Regulatory Board, or similar national organization, the department shall issue a license as a marriage and family therapist to an applicant who the board certifies:

(c) Has had at least 2 years of clinical experience during which 50 percent of the applicant's clients were receiving marriage and family therapy services, which must be at the post-

master's level under the supervision of a licensed marriage and family therapist with at least 5 years of experience, or the equivalent, who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before commencing practice. If a graduate has a master's degree with a major emphasis in marriage and family therapy or a closely related field which did not include all of the coursework required by paragraph (b), credit for the post-master's level clinical experience may not commence until the applicant has completed a minimum of 10 of the courses required by paragraph (b), as determined by the board, and at least 6 semester hours or 9 quarter hours of the course credits must have been completed in the area of marriage and family systems, theories, or techniques. Within the 2 years of required experience, the applicant shall provide direct individual, group, or family therapy and counseling to cases including those involving unmarried dyads, married couples, separating and divorcing couples, and family groups that include children. A doctoral associateship ~~internship~~ may be applied toward the clinical experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered associate ~~intern~~ in a private practice setting.

For the purposes of dual licensure, the department shall license as a marriage and family therapist any person who meets the requirements of s. 491.0057. Fees for dual licensure may not exceed those stated in this subsection.

(4) MENTAL HEALTH COUNSELING.—Upon verification of documentation and payment of a fee not to exceed $200, as set by board rule, plus the actual per applicant cost of purchase of the examination from the National Board for Certified Counselors or its successor organization, the department shall issue a license as a mental health counselor to an applicant who the board certifies:

(b)1. Has a minimum of an earned master's degree from a mental health counseling program accredited by the Council for the Accreditation of Counseling and Related Educational Programs which consists of at least 60 semester hours or 80 quarter hours of clinical and didactic instruction, including a course in human sexuality and a course in substance abuse. If the master's degree is earned from a program related to the practice of mental health counseling which is not accredited by the Council for the Accreditation of Counseling and Related Educational Programs, then the coursework and practicum, associateship ~~internship~~, or fieldwork must consist of at least 60 semester hours or 80 quarter hours and meet all of the following requirements:

a. Thirty-three semester hours or 44 quarter hours of graduate coursework, which must include a minimum of 3 semester hours or 4 quarter hours of graduate-level coursework in each of the following 11 content areas: counseling theories and practice; human growth and development; diagnosis and treatment of psychopathology; human sexuality; group theories and practice; individual evaluation and assessment; career and lifestyle assessment; research and program evaluation; social and cultural foundations; substance abuse; and legal, ethical,

and professional standards issues in the practice of mental health counseling. Courses in research, thesis or dissertation work, practicums, associateships ~~internships~~, or fieldwork may not be applied toward this requirement.

b. A minimum of 3 semester hours or 4 quarter hours of graduate-level coursework addressing diagnostic processes, including differential diagnosis and the use of the current diagnostic tools, such as the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. The graduate program must have emphasized the common core curricular experience.

c. The equivalent, as determined by the board, of at least 700 hours of university-sponsored supervised clinical practicum, associateship ~~internship~~, or field experience that includes at least 280 hours of direct client services, as required in the accrediting standards of the Council for Accreditation of Counseling and Related Educational Programs for mental health counseling programs. This experience may not be used to satisfy the post-master's clinical experience requirement.

2. Has provided additional documentation if a course title that appears on the applicant's transcript does not clearly identify the content of the coursework. The documentation must include, but is not limited to, a syllabus or catalog description published for the course.

Education and training in mental health counseling must have been received in an institution of higher education that, at the time the applicant graduated, was fully accredited by a regional accrediting body recognized by the Council for Higher Education

Accreditation or its successor organization or publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada, or an institution of higher education located outside the United States and Canada which, at the time the applicant was enrolled and at the time the applicant graduated, maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by a regional accrediting body recognized by the Council for Higher Education Accreditation or its successor organization. Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train students to practice as mental health counselors. The applicant has the burden of establishing that the requirements of this provision have been met, and the board shall require documentation, such as an evaluation by a foreign equivalency determination service, as evidence that the applicant's graduate degree program and education were equivalent to an accredited program in this country. Beginning July 1, 2025, an applicant must have a master's degree from a program that is accredited by the Council for Accreditation of Counseling and Related Educational Programs which consists of at least 60 semester hours or 80 quarter hours to apply for licensure under this paragraph.

(c) Has had at least 2 years of clinical experience in mental health counseling, which must be at the post-master's level under the supervision of a licensed mental health counselor or the equivalent who is a qualified supervisor as

determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before commencing practice. If a graduate has a master's degree with a major related to the practice of mental health counseling which did not include all the coursework required under sub-subparagraphs (b)1.a. and b., credit for the post-master's level clinical experience may not commence until the applicant has completed a minimum of seven of the courses required under sub-subparagraphs (b)1.a. and b., as determined by the board, one of which must be a course in psychopathology or abnormal psychology. A doctoral associateship ~~internship~~ may be applied toward the clinical experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered associate ~~intern~~ in a private practice setting.

Section 14. Effective July 1, 2022, paragraphs (f), (n), (o), (p), (r), (s), and (u) of subsection (1) of section 491.009, Florida Statutes, are amended to read:

491.009 Discipline.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(f) Maintaining a professional association with any person who the applicant, licensee, registered associate ~~intern~~, or certificateholder knows, or has reason to believe, is in violation of this chapter or of a rule of the department or the board.

(n) Failing to make available to a patient or client, upon written request, copies of tests, reports, or documents in the possession or under the control of the licensee, registered

associate ~~intern~~, or certificateholder which have been prepared for and paid for by the patient or client.

(o) Failing to respond within 30 days to a written communication from the department or the board concerning any investigation by the department or the board, or failing to make available any relevant records with respect to any investigation about the licensee's, registered associate's ~~intern's~~, or certificateholder's conduct or background.

(p) Being unable to practice the profession for which he or she is licensed, registered, or certified under this chapter with reasonable skill or competence as a result of any mental or physical condition or by reason of illness; drunkenness; or excessive use of drugs, narcotics, chemicals, or any other substance. In enforcing this paragraph, upon a finding by the State Surgeon General, the State Surgeon General's designee, or the board that probable cause exists to believe that the licensee, registered associate ~~intern~~, or certificateholder is unable to practice the profession because of the reasons stated in this paragraph, the department shall have the authority to compel a licensee, registered associate ~~intern~~, or certificateholder to submit to a mental or physical examination by psychologists, physicians, or other licensees under this chapter, designated by the department or board. If the licensee, registered associate ~~intern~~, or certificateholder refuses to comply with such order, the department's order directing the examination may be enforced by filing a petition for enforcement in the circuit court in the circuit in which the licensee, registered associate ~~intern~~, or certificateholder resides or does business. The licensee, registered associate ~~intern~~, or

certificateholder against whom the petition is filed may ~~shall~~ not be named or identified by initials in any public court records or documents, and the proceedings must ~~shall~~ be closed to the public. The department is ~~shall be~~ entitled to the summary procedure provided in s. 51.011. A licensee, registered associate ~~intern~~, or certificateholder affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume the competent practice for which he or she is licensed, registered, or certified with reasonable skill and safety to patients.

(r) Failing to meet the minimum standards of performance in professional activities when measured against generally prevailing peer performance, including the undertaking of activities for which the licensee, registered associate ~~intern~~, or certificateholder is not qualified by training or experience.

(s) Delegating professional responsibilities to a person whom the licensee, registered associate ~~intern~~, or certificateholder knows or has reason to know is not qualified by training or experience to perform such responsibilities.

(u) Failure of the licensee, registered associate ~~intern~~, or certificateholder to maintain in confidence a communication made by a patient or client in the context of such services, except as provided in s. 491.0147.

Section 15. Effective July 1, 2022, paragraphs (i), (j), (k), and (l) of subsection (1) of section 491.012, Florida Statutes, are amended to read:

491.012 Violations; penalty; injunction.—

(1) It is unlawful and a violation of this chapter for any person to:

(i) Practice clinical social work in this state for compensation, unless the person holds a valid, active license to practice clinical social work issued pursuant to this chapter or is an associate ~~intern~~ registered pursuant to s. 491.0045.

(j) Practice marriage and family therapy in this state for compensation, unless the person holds a valid, active license to practice marriage and family therapy issued pursuant to this chapter or is an associate ~~intern~~ registered pursuant to s. 491.0045.

(k) Practice mental health counseling in this state for compensation, unless the person holds a valid, active license to practice mental health counseling issued pursuant to this chapter or is an associate ~~intern~~ registered pursuant to s. 491.0045.

(l) Use the following titles or any combination thereof, unless he or she holds a valid registration as an associate ~~intern~~ issued pursuant to this chapter:

1. "Registered associate clinical social worker ~~intern~~."

2. "Registered associate marriage and family therapist ~~intern~~."

3. "Registered associate mental health counselor ~~intern~~."

Section 16. Effective July 1, 2022, paragraph (c) of subsection (4) of section 491.014, Florida Statutes, is amended to read:

491.014 Exemptions.—

(4) No person shall be required to be licensed, provisionally licensed, registered, or certified under this chapter who:

(c) Is a student providing services regulated under this

chapter who is pursuing a course of study which leads to a degree in a profession regulated by this chapter, is providing services in a training setting, provided such services and associated activities constitute part of a supervised course of study, and is designated by the title "student associate ~~intern~~."

Section 17. Effective July 1, 2022, subsection (3) of section 491.0145, Florida Statutes, is amended to read:

491.0145 Certified master social worker.—The department may certify an applicant for a designation as a certified master social worker upon the following conditions:

(3) The applicant has had at least 3 years' experience, as defined by rule, including, but not limited to, clinical services or administrative activities as defined in subsection (2), 2 years of which must be at the post-master's level under the supervision of a person who meets the education and experience requirements for certification as a certified master social worker, as defined by rule, or licensure as a clinical social worker under this chapter. A doctoral associateship ~~internship~~ may be applied toward the supervision requirement.

Section 18. Effective July 1, 2022, subsection (2) of section 491.0149, Florida Statutes, is amended to read:

491.0149 Display of license; use of professional title on promotional materials.—

(2)(a) A person registered under this chapter as an associate ~~a~~ clinical social worker ~~intern~~, associate marriage and family therapist ~~intern~~, or associate mental health counselor ~~intern~~ shall conspicuously display the valid registration issued by the department or a true copy thereof at

each location at which the registered associate ~~intern~~ is completing the experience requirements.

(b) A registered associate clinical social worker ~~intern~~ shall include the words "registered associate clinical social worker ~~intern~~," a registered associate marriage and family therapist ~~intern~~ shall include the words "registered associate marriage and family therapist ~~intern~~," and a registered associate mental health counselor ~~intern~~ shall include the words "registered associate mental health counselor ~~intern~~" on all promotional materials, including cards, brochures, stationery, advertisements, and signs, naming the registered associate ~~intern~~.

Section 19. 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 upon enactment of the Professional Counselors Licensure Compact into law by 10 states.

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 Appropriations

BILL:	CS/CS/SB 358
INTRODUCER:	Appropriations Subcommittee on Health and Human Services; Health Policy Committee; and Senator Rodriguez
SUBJECT:	Professional Counselors Licensure Compact
DATE:	March 2, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Brown	HP	**Fav/CS**
2.	Howard	Money	AHS	**Recommend: Fav/CS**
3.	Howard	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 358 authorizes Florida to participate in the Professional Counselors Licensure Compact (counseling compact or compact) for the licensure of mental health counselors and makes changes to the practice acts for mental health counselors, a clinical social workers, and marriage and family therapists. The compact takes effect upon its enactment by 10 states, and to date, only two states have enacted the compact. The bill grants 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 in another member state, both in-person and through telehealth.

The bill also:

- Requires the Department of Health (department) to report any significant investigatory information relating to a health care practitioner practicing under the compact to the compact's licensure data system.
- Provides for the participation of impaired practitioners who are practicing under the compact in impaired practitioner programs.
- Requires the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (Board) to appoint an individual to serve as Florida's delegate on the Counseling Compact Commission (commission).
- Authorizes the Board to take adverse action against a mental health counselor's privilege to practice under the compact and authorizes the Board to impose grounds for discipline.

- Designates the state delegate and other members or employees of the commission as state agents for the purpose of applying waivers of sovereign immunity.

According to the department, the provisions of the bill relating to the compact will have a significant fiscal impact on the department requiring one additional full-time equivalent (FTE) position to support the workload associated with processing applications and issuing initial and renewal licenses and privileges to practice. The bill authorizes member states to charge a fee for granting a privilege to practice under the compact. The number of applicants for compact licensure is indeterminate and the department indicates that the fiscal impact cannot be calculated.[1]

The commission may collect an annual assessment from each member state or impose fees on other parties to cover the cost of operations and activities. The annual membership cost with the Professional Counselors Licensure Compact is unknown at this time.

The bill amends a provision authorizing the Board to make a one-time exception for mental health counselor, clinical social worker, and marriage and family therapist intern registration requirements for emergency or hardship cases by removing the requirement that the candidate pass a theory and practice examination, effective upon the act becoming a law.

The bill amends the practice acts for mental health counselors, a clinical social workers, and marriage and family therapists to replace the words "intern" and "internship" with "associate" and "associateship," effective July 1, 2022.

The bill provides an effective date contingent on the enactment of the compact into law by 10 states, except as otherwise expressly provided in the bill, and requires the department to notify the Division of Law Revision in that event.

II. Present Situation:

Occupational Licensure Compacts

Interstate compacts are authorized under the U.S. Constitution, Article I, Section 10, cl. 3.[2] Compacts that affect a power delegated to the federal government or that affect or alter the political balance within the federal system require the consent of Congress.[3] The licensing of professions is predominantly a state responsibility as each state has developed its own regulations, oversight boards, and requirements for dozens of professions and occupations.

In September 2018, the Federal Trade Commission (FTC) looked at the issue of state-by-state occupational licensure and its unintended consequences. In particular, the FTC noted that state-by-state licensing can have a particularly hard effect on those in the military and their spouses who are required to move frequently, those who provide services across state lines, or deliver

[1] Department of Health, 2022 Senate Bill 358 Legislative Bill Analysis (Oct. 25, 2021) (on file with the Senate Committee on Health Policy).
[2] "No state shall, without the Consent of Congress…enter into any Agreement or Compact with another State, or with a foreign Power[.]" *see* U.S. CONST. art. I, s. 10, cl. 3. While the language of the provision says congressional approval is required, not all compacts require congressional approval.
[3] *Virginia v. Tennessee*, 148 U.S. 503 (1893).

services through telehealth.[4] The FTC also suggested that improved licensed portability would enhance competition, choice, and access for consumers, especially where services may be in short supply.[5]

According to the Council of State Governments (CSG), since January 2016, 170 separate pieces of licensure compact legislation have been passed in the United States.[6] To date, 42 states and territories have enacted occupational licensure compacts for nurses, physicians, physical therapists, emergency medical technicians, psychologists, speech therapists, audiologists, occupational therapists, and counselors.[7]

Nurse Licensure Compact

On January 19, 2018, licensed Florida nurses became eligible to apply for a multi-state license under the enhanced Nurse Licensure Compact (eNLC.)[8] The eNLC allows registered nurses and licensed practical nurses who hold licensure in one Compact state to practice in any of the 27 Compact states without obtaining additional state licenses. The Department of Health (department) reports that the eNLC has effectively reduced regulatory requirements by eliminating the need for nurses to obtain a separate license to practice in different states.[9] Florida joined the Nurse Licensure Compact upon the passage of HB 1061 during the 2016 regular Legislative Session.[10] The eNLC was officially enacted when North Carolina Governor Roy Cooper, signed legislation to become the 26th state to join the compact on July 20, 2017.[11] That date became the effective date for the start of the compact commission, an agency governing the compact.[12]

Interstate Compact for Licensed Professional Counselors

The Interstate Compact for Licensed Professional Counselors (counseling compact or 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.[13] 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).[14]

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[4] Federal Trade Commission, *Policy Perspectives, Options to Enhance Occupational License Portability* (September 2018), *available at* https://www.ftc.gov/system/files/documents/reports/options-enhance-occupational-license-portability/license_portability_policy_paper.pdf (last visited Oct. 31, 2021).
[5] *Id*.
[6] *Supra* note 1.
[7] *Id*.
[8] *Id*.
[9] *Id*.
[10] Chapter 2016-139, Laws of Fla.
[11] Debra Wood, RN., *The Enhanced Nurse Licensure* (July 28, 2017) *available at* https://www.nursechoice.com/blog/profiles-and-features/the-enhanced-nurse-licensure-compact-explained/ (last visited Oct. 31, 2021).
[12] *Id.*
[13] Counseling Compact, *News*, *available at* https://counselingcompact.org/news/ (last visited Oct. 31, 2021).
[14] Counseling Compact, *Maps*, *available at* https://counselingcompact.org/map/ (last visited Oct. 31, 2021).

Interstate Licensure Compact for Social Work[15]

The National Association of Social Workers is beginning to pursue its own Interstate Licensure Compact for Social Work. That draft compact has not yet been finalized.

Model of Marriage and Family Therapy License Portability[16]

Rather than pursue a compact, the American Association for Marriage and Family Therapy has created a Model of Marriage and Family Therapy (MFT) License Portability. This portability model is a full endorsement model, meaning that a state will license an applicant as a licensed marriage and family therapist if the applicant has a valid and unrestricted license to practice marriage and family therapy in another state.

Mental Health Counseling in Florida

The licensed Mental Health Counseling profession continues to expand in Florida and has reported an average growth in recent years of more than 1,000 new licensees per year, increasing the total licensed population to 15,518 practitioners.[17]

Florida law delineates between an application by examination for initial licensure and application by endorsement for mental health counselors who have previously held an active, unencumbered, license in another state. The application for licensure as a mental health counselor includes a mandatory disclosure of criminal history, but applicants are not required to submit fingerprints to complete a criminal background check.[18] Section 456.0135, F.S., provides the department with authority to mandate criminal background checks for specified professions and mental health professions regulated by ch. 491, F.S., are not included in the list of specified professions.

Licensure of Mental Health Counselors by Examination

Pursuant to s. 491.005(4), F.S., the department shall license an applicant as a mental health counselor, if he or she:

- Pays the appropriate fee;
- Possesses a minimum of a master's degree from a regionally accredited program in Mental Health Counseling or a closely related field that consists of at least 60 semester hours or 80 quarter hours and specific graduate coursework, including: Counseling Theories and Practice, Human Growth and Development, Diagnosis and Treatment of Psychopathology, Human Sexuality, Group Theories and Practice, Individual Evaluation and Assessment, Career and Lifestyle Assessment, Research and Program Evaluation, Social and Cultural Foundations, Substance Abuse, and Legal, Ethical, and Professional Standards Issues. Beginning July 1, 2025, an applicant must have a master's degree from a program that is accredited by the

[15] National Association of Social Workers, *Interstate Licensure Compact*, https://www.socialworkers.org/Advocacy/Social-Justice/Interstate-Licensure-Compact-for-Social-Work (last visited Oct. 31, 2021).
[16] American Association for Marriage and Family Therapy, *MFT License Portability*, https://www.aamft.org/AAMFT/ADVANCE_the_Profession/License_Portability/Advocacy/MFT%20License%20Portability.aspx (last visited Nov. 4, 2021).
[17] *Supra* note 1.
[18] *Id.*

Council for Accreditation of Counseling and Related Educational Programs (CACREP) which consists of at least 60 semester hours or 80 quarter hours to be licensed;[19]
- Has had at least two years of clinical experience in mental health counseling. Initial applicants must provide documentation to demonstrate completion of a 700-hour university-sponsored clinical practicum or internship with at least 280 hours of direct client services. After graduation, registered mental health counselor interns are required to complete post-graduate supervised experience conducted under the supervision of a board-approved qualified supervisor with at least 100 hours of supervision in no less than 100 weeks. Supervision experience hours are accrued on an hour-for-hour basis by providing face-to-face psychotherapy with clients. Registered interns are required to meet with their qualified supervisor every two weeks to review cases and to receive guidance;
- Has passed the National Clinical Mental Health Counseling Examination (NCMHCE) developed by the National Board for Certified Counselors (NBCC);[20]
- Completes a three-hour course on HIV/Aids pursuant to s. 491.0065, F.S.; and
- Agrees to complete a two-hour domestic violence course within six months of licensure.[21]

Licensure of Mental Health Counselors by Endorsement

Applicants by endorsement who have practiced mental health counseling in another state for at least three out of the last five years are considered to have completed all minimum education, practicum, and supervision requirements and are required to provide limited documentation to become licensed.[22] As a method to streamline licensure for experienced mental health counselors, Florida law does not require endorsement candidates to provide proof of education nor demonstrate completion of supervised experience.[23] Pursuant to s. 491.006, F.S., the department shall license an applicant as a mental health counselor if he or she:
- Pays the appropriate fee;
- Holds a valid license to practice in another state and have practiced for at least three out of the last five years preceding licensure;
- Demonstrates, in a manner designated by rule of the Board, knowledge of the laws and rules governing the practice of mental health counseling in Florida. Rule 64B4-3.0035 requires these applicants to complete an eight hour course and obtain a passing score on a corresponding examination;
- Has passed the NCMHCE or a licensing examination substantially equivalent to the NCMHCE in another state or in this state;
- Completes a three-hour course on HIV/Aids pursuant to s. 491.0065, F.S.;
- Agrees to complete a two-hour domestic violence course within six months of licensure;[24] and
- Holds a license in good standing and is not under investigation in Florida or another jurisdiction for an act which would constitute a violation of ch. 491, F.S.

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[19] *Id.*
[20] *Id.*
[21] Florida Board of Clinical Social Work, Marriage & Family Therapy, and Mental Health Counseling, *Licensed Mental Health Counselor: Requirements available at* https://floridasmentalhealthprofessions.gov/licensing/licensed-mental-health-counselor/#tab-requirements (last accessed Oct. 31, 2021).
[22] *Supra* note 1.
[23] *Id.*
[24] *Id.* at 20.

Mental Health Counseling in Florida through Telehealth

In 2019, the Legislature passed and the Governor approved CS/CS/HB 23, which created s. 456.47, F.S. The bill became effective on July 1, 2019.[25] It authorized Florida-licensed health care providers, including mental health counselors who are either Florida-licensed or licensed under a multi-state health care licensure compact of which Florida is a member state,[26] to use telehealth to deliver health care services within their respective scopes of practice.

The bill also authorized out-of-state health care providers to use telehealth to deliver health care services to Florida patients if they register with the department or the applicable board[27] and meet certain eligibility requirements.[28] A registered out-of-state telehealth provider may use telehealth, within the relevant scope of practice established by Florida law and rule, to provide health care services to Florida patients but is prohibited from opening an office in Florida and from providing in-person health care services to patients located in Florida.

The Legislature also passed HB 7067 in 2019 that would have required an out-of-state telehealth provider to pay an initial registration fee of $150 and a biennial registration renewal fee of $150, but the bill was vetoed by the Governor and did not become law.[29]

On March 21, 2020, Surgeon General Scott Rivkees executed the department's Emergency Order 20-003[30] to authorize certain out-of-state clinical social workers, marriage and family therapists, mental health counselors, and psychologists to provide telehealth in Florida without the need to register as a telehealth provider under s. 456.47(4), F.S. These emergency orders were extended and expired on June 26, 2021.[31] Out-of-state health care practitioners are no longer authorized to perform telehealth services for patients in Florida unless they become licensed or registered in Florida.

Florida-licensed providers may not provide health care services to clients located in other states without express authorization from each state.

Sovereign Immunity

Sovereign immunity generally bars lawsuits against the state or its political subdivisions for torts committed by an officer, employee, or agent of such governments unless the immunity is

[25] Chapter 2019-137, s. 6, Laws of Fla.
[26] Section 456.47(1)(b), F.S.
[27] Under s. 456.001(1), F.S., the term "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 department or, in some cases, within the department's Division of Medical Quality Assurance. The
[28] Section 456.47(4), F.S.
[29] Transmittal Letter from Governor Ron DeSantis to Secretary of State Laurel Lee (June 27, 2019) *available at* https://www.flgov.com/wp-content/uploads/2019/06/06.27.2019-Transmittal-Letter-3.pdf (last visited Feb. 14, 2021).
[30] Department of Health, State of Florida, *Emergency Order department No. 20-003* (Mar. 21, 2020) *available at* https://s33330.pcdn.co/wp-content/uploads/2020/03/DOH-EO-20-003-3.21.2020.pdf (last visited Oct. 21, 2021).
[31] Florida Board of Medicine, *Important Updates for Health Care Providers Regarding Expiration of Emergency Orders* (July 1, 2021) *available at* https://r.bulkmail.flhealthsource.gov/mk/mr/JV-U0AMitwBXlP7zcFx3Djqu1KfE1B57JaGN-nnNySmOjEY5xGSsIyII28XjOGeZ4yKv9rWQUryqAibmdrixNZdgE9Q61dmUoHRF1Rnyijg-ewyAl_rZBT8c (last visited Oct. 18, 2021).

expressly waived. The Florida Constitution recognizes that the concept of sovereign immunity applies to the state, although the state may waive its immunity through an enactment of general law.[32]

In 1973, the Legislature enacted s. 768.28, F.S., a partial waiver of sovereign immunity, allowing individuals to sue state government and its subdivisions.[33] According to subsection (1), individuals may sue the government under circumstances where a private person "would be liable to the claimant, in accordance with the general laws of [the] state . . ." Section 768.28(5), F.S., imposes a $200,000 limit on the government's liability to a single person, and a $300,000 total limit on liability for claims arising out of a single incident.

III. Effect of Proposed Changes:

Section 1 creates the Professional Counselors Licensure Compact as s. 491.017, F.S., which enters Florida into the compact. The compact has 15 articles that establish the compact's administration and components and prescribe how the commission will oversee the compact and conduct its business. The table below summarizes the new statutory language, by article, which creates the components of the compact.

Provisions of the Professional Counselors Licensure Compact		
Article	**Title**	**Description**
I	Purpose	The primary purpose of the compact is to facilitate the interstate practice of licensed professional counselors with the goal of improving public access to professional counseling services.
II	Definitions	Definitions are provided for the following terms: • "Active duty military" means full-time duty status in the active uniformed service of the United States, including, but not limited to, members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. chapters 1209 and 1211. • "Adverse action" means any administrative, civil, or criminal action authorized by a state's laws which is imposed by a licensing board or other authority against a licensed professional counselor, including actions against an individual's license or privilege to practice, such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, issuance of a cease and desist action, or any other encumbrance on licensure affecting a licensed professional counselor's authorization to practice. • "Alternative program" means a nondisciplinary monitoring or practice remediation process approved by a professional counseling licensing board to address impaired practitioners.

[32] FLA. CONST. art. X, s. 13.
[33] Chapter 73-313, L.O.F., codified at s. 768.28, F.S.

Provisions of the Professional Counselors Licensure Compact		
Article	**Title**	**Description**

		• "Continuing education" means a requirement, as a condition of license renewal, to participate in or complete educational and professional activities relevant to the licensee's practice or area of work.
		• "Counseling Compact Commission" or "commission" means the national administrative body whose membership consists of all states that have enacted the compact.
		• "Current significant investigative information" means:
		  o Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the licensed professional counselor to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or
		  o Investigative information that indicates that the licensed professional counselor represents an immediate threat to public health and safety, regardless of whether the licensed professional counselor has been notified and had an opportunity to respond.
		• "Data system" means a repository of information about licensees, including, but not limited to, information relating to continuing education, examinations, licensure statuses, investigations, the privilege to practice, and adverse actions.
		• "Encumbered license" means a license in which an adverse action restricts the practice of licensed professional counseling by the licensee and said adverse action has been reported to the National Practitioner Data Bank.
		• "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of licensed professional counseling by a licensing board.
		• "Executive committee" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.
		• "Home state" means the member state that is the licensee's primary state of residence.
		• "Impaired practitioner" means an individual who has a condition that may impair his or her ability to safely practice as a licensed professional counselor without intervention. Such impairment may include, but is not limited to, alcohol or drug dependence, mental health conditions, and neurological or physical conditions.
		• "Investigative information" means information, records, or documents received or generated by a professional counseling licensing board pursuant to an investigation.

Provisions of the Professional Counselors Licensure Compact		
Article	**Title**	**Description**
		• "Jurisprudence requirement," if required by a member state, means the assessment of an individual's knowledge of the laws and rules governing the practice of professional counseling in a state. • "Licensed professional counselor" means a mental health counselor licensed under ch. 491, F.S., or a counselor licensed by a member state, regardless of the title used by that state, to independently assess, diagnose, and treat behavioral health conditions. • "Licensee" means an individual who currently holds an authorization from the state to practice as a licensed professional counselor. • "Licensing board" means the agency of a state, or equivalent, that is responsible for the licensing and regulation of licensed professional counselors. • "Member state" means a state that has enacted the compact. • "Privilege to practice" means a legal authorization, which is equivalent to a license, authorizing the practice of professional counseling in a remote state. • "Professional counseling" means the assessment, diagnosis, and treatment of behavioral health conditions by a licensed professional counselor. • "Remote state" means a member state, other than the home state, where a licensee is exercising or seeking to exercise the privilege to practice. • "Rule" means a regulation adopted by the commission which has the force of law. • "Single state license" means a licensed professional counselor license issued by a member state which authorizes practice only within the issuing state and does not include a privilege to practice in any other member state. • "State" means any state, commonwealth, district, or territory of the United States of America which regulates the practice of professional counseling. • "Telehealth" means the application of telecommunication technology to deliver professional counseling services remotely to assess, diagnose, and treat behavioral health conditions. • "Unencumbered license" means a license that authorizes a licensed professional counselor to engage in the full and unrestricted practice of professional counseling.
III	State Participation	To participate in the compact, a state must currently do all of the following: • License and regulate licensed professional counselors.

Provisions of the Professional Counselors Licensure Compact		
Article	**Title**	**Description**
		• Require licensees to pass a nationally recognized exam. • Require licensees to have a 60 semester hour, or 90 quarter hour, master's degree in counseling or 60 semester hours, or 90 quarter hours, of graduate coursework in relevant areas. • Require licensees to complete a supervised postgraduate professional experience, *as defined by the commission*. • Have a mechanism in place for receiving and investigating complaints about licensees. (Initial Florida applicants must possess a master's degree from a regionally accredited program in mental health counseling or a closely related field that consists of at least 60 semester hours or 80 quarter hours and required graduate coursework. Initial Florida applicants must also complete two years of clinical experience in mental health counseling as a registered mental health counselor intern.) A member state must: • Participate fully in the compact commission's licensure data system. • Notify the commission of any adverse action against or of current significant investigative information regarding a licensee. • Conduct criminal background checks of candidates for an initial privilege to practice. • Comply with rules of the commission, established in article IX. • Grant the privilege to practice professional counseling to a licensee holding a valid, unencumbered license in another member state. • Provide for the state's commissioner to attend the meetings of the commission. A member state may charge a fee for granting a privilege to practice. A licensed professional counselor may only utilize the compact if their home state joins the compact.
IV	Privilege to Practice	A licensee may seek a privilege to practice within a remote state. To exercise the privilege to practice professional counseling within a remote state, a licensee must: • Hold a license in his or her home state which must be a member of the compact. • Have had no encumbrance or restriction against any license or privilege to practice within the previous two years.

Provisions of the Professional Counselors Licensure Compact		
Article	**Title**	**Description**
		• *Meet any continuing education and jurisprudence requirements of the remote state and pay all applicable fees*. • Report to the commission any adverse action, encumbrance, or restriction imposed on the licensee by a non-member state within 30 days from the date of the action. A privilege to practice is valid until the expiration date of the practitioner's home state license. A licensee providing professional counseling in a remote state under the privilege to practice must adhere to the laws and regulations of the remote state. If a licensee's home state license is encumbered, the licensee loses the privilege to practice in any remote state for the next two years. If a licensee's privilege to practice is removed by a member state, the licensee may lose their privilege to practice in member states for the next two years.
V	Obtaining a New Home State License based on a Privilege to Practice	A licensee may hold a home state license in only one member state at a time. A licensee who moves from one member state to another member state may obtain a new, expedited home state license in the new state of residence if he or she holds a privilege to practice in the new state. The licensee will be required to complete a new FBI fingerprint-based criminal background check if not previously performed, complete any required state-level background check, *meet any jurisprudence requirements of the new home state*, and pay all applicable fees. (Florida-licensed mental health counselors are not currently required to be fingerprinted and background-screened as a condition of licensure. See s. 456.0135, F.S. If the compact is enacted in Florida, single-state applicants and registered interns would not be required to submit to a criminal history check, but applicants under the compact would be.) If a new home state license is granted, the former home state must convert the former home state license into a privilege to practice.
VI	Active Duty Military Personnel and their Spouses	Active duty military personnel, or their spouse, may designate a home state where the individual has a current license in good standing. This state serves as the individual's home state for the duration of the service member's active duty.

Provisions of the Professional Counselors Licensure Compact		
Article	**Title**	**Description**
VII	Compact Privilege to Practice Telehealth	Member states must recognize the right of a licensed professional counselor to practice professional counseling in any member state through telehealth under a privilege to practice. A licensee providing telehealth services in a remote state must adhere to the laws and regulations of that state.
VIII	Adverse Actions	Only a practitioner's home state has the power to take adverse action against a home state license. Home states must give the same priority and effect to reported conduct received from a member state as it would if the conduct had occurred within the home state. The home state must apply its own state laws to determine appropriate action in such cases. Remote states may take adverse action against a counselor's privilege to practice within that member state and may issue enforceable subpoenas for witnesses and evidence from other member states. A member state, if authorized by state law, may recover from the affected licensed professional counselor the costs of investigations and dispositions of any cases resulting from adverse action taken against that licensed professional counselor. Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact. If a member state takes adverse action, it must promptly notify the administrator of the data system. The administrator shall promptly notify the licensee's home state of any adverse actions by remote states. The bill maintains the right for state boards to require licensees to participate in impaired practitioner programs.
IX	Establishment of Counseling Compact Commission	The Counseling Compact Commission (commission) is established by the member states as a joint public agency. Judicial proceedings by or against the commission must be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent that it adopts or consents to participate in alternative dispute resolution proceedings. *Nothing in the compact may be construed as a waiver of sovereign immunity.*

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		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 is directed to establish a term of office for delegates and may establish term limits. The commission must meet at least once during each calendar year and all meetings must be open to the public. The commission, or the executive committee of the commission may convene in a closed, nonpublic meeting under certain circumstances. (See "Public Records/Open Meetings Issues" in Section IV of this analysis.) The commission must keep detailed minutes. The commission may establish and maintain a code of ethics, bylaws, rules, a budget, financial records, and may initiate or prosecute legal proceedings or actions in the name of the commission, in order to carry out the compact. The commission must select an executive committee composed of up to eleven members: seven members of the commission and up to four ex-officio, nonvoting members from four recognized national professional counselor organizations. The executive committee must meet at least annually and must, at a minimum, do all of the following: • Make recommendations to the commission for any changes to the rules, bylaws, compact legislation, fees paid by member states, and fees charged to licensees for the privilege to practice. • Prepare and recommend the budget. • Maintain financial records. • Monitor compliance of member states and provide compliance reports to the commission. • Establish additional committees as necessary. The commission must pay or provide for the payment of certain reasonable expenses and may accept appropriate revenue. The commission may not incur obligations of any kind before securing funds adequate to meet the same. Receipts and disbursements of funds handled by the commission must be audited annually by a certified or licensed public accountant. The commission may levy and collect an annual assessment from each member state or impose fees on other parties to cover the cost

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		of the operations and activities of the commission and its staff. Such assessments and fees must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount must be allocated based on a formula to be determined by the commission, which must adopt a rule binding on all member states. Commission members and employees are immune from liability related to their positions except in cases of wanton misconduct.
X	Data System	The Commission must provide for the development, operation, and maintenance of a coordinated database and reporting system (the data system) containing licensure, adverse action, and investigative information on all licensed professional counselors in member states. A member state must 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. 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. (See "Public Records/Open Meetings Issues" in Section IV of this analysis.)
XI	Rulemaking	The Commission shall adopt reasonable rules to effectively and efficiently achieve the purposes of the compact. If the commission issues a rule that exceeds its authority under the compact, such a rule is void and has no force or effect. Rules carry the force of law in all member states. If a majority of the legislatures of member states reject a rule by enactment of a statute or a resolution in the same manner used to adopt the compact within 4 years after the date of the adoption of a rule, such rule does not have further force or effect in any member state. Before adoption of a final rule by the commission, and at least 30 days in advance of the meeting at which the rule will be considered and voted upon, the commission must file a notice of proposed rulemaking, which must include the text of the proposed rule, on the commission's website and on the website of each member state's professional licensing board. Interested persons may submit notice to the commission of their intention to attend a public hearing and

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		may submit written comments before the commission may adopt a proposed rule. The commission must grant an opportunity for a public hearing if it is requested by at least 25 independent persons, a state or federal governmental subdivision or agency, or an association that has at least 25 members. Rules may be grouped at public hearings for the convenience of the commission. The commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing under certain circumstances.
XII	Oversight; Default, Technical Assistance, and Termination Dispute Resolution; and Enforcement	If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the compact or adopted rules, the commission must provide written notice, remedial training, and technical assistance to the state. If a state fails to cure a default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the member states and only after all other means of securing compliance have been exhausted. The commission shall attempt to resolve any compact-related disputes that may arise between states. The commission is responsible for enforcing the provisions and rules of the compact.
XIII	Date of Implementation of the Counseling Compact Commission and Associated Rules, Withdrawal, and Amendment	The compact becomes effective on the date on which the compact is enacted into law in the 10th member state. Thereafter, the commission must meet and exercise rulemaking powers necessary for the implementation and administration of the compact. States that join the compact after this date are subject to the rules of the commission as they exist on the date when the compact becomes law in that state. Member states withdraw from the compact by enacting a statute repealing the compact. *A state's withdrawal takes effect 6 months after enactment of the repealing statute.* The member states may amend the compact, but changes do not take effect until enacted into the laws of all member states.
XIV	Binding Effect of Compact and Other Laws	A licensee providing professional counseling services in a remote state under the privilege to practice must adhere to the laws and regulations, including scope of practice, of the remote state.

Provisions of the Professional Counselors Licensure Compact		
Article	**Title**	**Description**
		All rules and bylaws properly adopted by the commission are binding on the member states. *In the event of a conflict between a law of a member state and the compact, the state law is superseded to the extent of the conflict*.
IV	Construction and Severability	The compact is to be liberally construed so as to effectuate its purposes. The compact's provisions are severable. If a provision of the compact is declared to conflict with the United States Constitution, all other provisions remain valid for all member states. If a provision is held contrary to a member state's constitution, the compact retains its full force in all other states, and all other provisions remain valid in the affected state.

Section 491.004(5), F.S., requires the Board of Clinical Social Work, Marriage & Family Therapy, and Mental Health Counseling to adopt rules to implement and enforce the provisions of ch. 491, F.S. Section 1 of the bill creates s. 491.017, F.S., thereby requiring the Board to adopt rules to implement and enforce the compact.

Section 2 amends s. 456.073, F.S., to require the department to report any significant investigatory information relating to a health care practitioner practicing under the compact to the data system. Investigatory information is typically gathered as the department investigates complaints and assesses the need to discipline a licensee.

Section 3 amends s. 456.076, F.S., to require a consultant (who operates an approved impaired practitioner program) entering into a participant contract with an impaired practitioner who is practicing under the compact, to establish terms in the monitoring contract that include the impaired practitioner's withdrawal from all practice under the compact.

Section 4 amends s. 491.003, F.S., to amend the definitions section within the practice acts for mental health counselors, a clinical social workers, and marriage and family therapists to replace the words "intern" and "internship" with "associate" and "associateship," effective July 1, 2022.

Section 5 amends s. 491.004, F.S., to require the Board to appoint an individual to serve as the state's delegate on the commission.

Section 6 amends 491.0045, F.S., to amend a provision authorizing the Board to make a one-time exception for mental health counselor, clinical social worker, and marriage and family therapist intern registration requirements for emergency or hardship cases by removing the requirement that the candidate pass the theory and practice examination described in s. 491.005(1)(d), (3)(d), and (4)(d), F.S., effective upon the date the act becomes a law.

Section 7 amends s. 491.005, F.S., to exempt a person licensed as a mental health counselor in another state who is practicing under the compact pursuant to s. 491.017, F.S., and only within the scope provided therein, from licensure by examination requirements, as applicable.

Section 8 amends s. 491.006, F.S., to exempt a person licensed as a mental health counselor in another state who is practicing under the compact pursuant to s. 491.017, F.S., and only within the scope provided therein, from licensure by endorsement requirements, as applicable.

Section 9 amends s. 491.009, F.S., to authorize the Board to take adverse action against a mental health counselor's privilege to practice under the compact and authorizes the Board impose grounds for discipline if the mental health counselor commits an act specified in subsection (1) of this section or in s. 456.072(1), F.S.

Section 10 amends s. 768.28, F.S., to designate as agents of the state, the individual appointed as the state's delegate on the commission when serving in that capacity, and any administrator, officer, executive director, employee, or representative of the commission, when acting within the scope of his or her employment, duties, or responsibilities in this state, for the purpose of applying waivers of sovereign immunity. This section also requires the commission to pay certain claims or judgments and authorizes the commission to maintain insurance coverage to pay such claims or judgments.

Section 11 requires the department to notify the Division of Law Revision upon the enactment of the compact into law by 10 states.

Sections 12 through 18 amend the practice acts for mental health counselors, a clinical social workers, and marriage and family therapists to replace the words "intern" and "internship" with "associate" and "associateship," effective July 1, 2022.

Section 19 provides an effective date contingent on the enactment of the compact into law by 10 states, except as otherwise expressly provided in the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

A counselor's personal identifying information, other than the counselor's name, licensure status, or licensure number, may be entered into the system by the Department of Health (department) or the Board or may be obtained by the department or the Board from the data system as reported by another state.

A meeting or a portion of a meeting of the commission, or the executive committee of the commission may be closed if the commission's legal counsel or designee has certified that the meeting may be closed because the commission or executive committee of the commission must discuss any of the following:

- 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.

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.

These issues are addressed in linked bill, SB 590.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, s. 19, of the State Constitution requires that the imposition of, or the authorization of, a new state tax or fee, as well as an increased state tax or fee, must be approved by two-thirds of the membership of each house of the Legislature and must be contained in a separate bill that contains no other subject. Article VII, s. 19(d)(1) of the State Constitution defines "fee" to mean "any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service." The bill authorizes the counseling compact commission and the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling to impose a new state tax or fee.

The bill authorizes member states to charge a fee for granting a privilege to practice in their state. The bill requires a licensee seeking to practice under the compact to pay any applicable fees, including any state fee, for the privilege to practice. The bill requires a compact counselor who changes his or her primary state of residence by moving between two member states to pay all applicable fees to his or her new home state.

The bill authorizes the commission to levy and collect an annual assessment from each member state or impose fees *on other parties* to cover the cost of the operations and activities of the commission and its staff. Such assessments and fees must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount must be allocated based on a formula to be determined by the commission, which must adopt a rule binding on all member states.

Section 491.004(5), F.S., requires the Board to adopt rules to implement and enforce the provisions of ch. 491, F.S. Section 1 of the bill creates the Professional Counseling Licensure Compact as s. 491.017, F.S., thereby requiring the Board to adopt rules to implement and enforce the compact, which may include the imposition of a fee for

granting a privilege to practice in this state granting and a fee to cover the cost of the operations and activities of the commission, pursuant to the compact.

E. Other Constitutional Issues:

The compact authorizes the commission to "adopt reasonable rules to effectively and efficiently achieve the purposes of the compact," and these rules carry the force of law in member states, which is potentially an unlawful delegation of legislative authority. If enacted into law, the state will bind itself to rules not yet promulgated and adopted by the commission.

The Legislature delegated similar rulemaking powers to the Nurse Licensure Compact when it adopted the compact language into statute. The rules adopted by the Nurse Licensure Compact are now applicable to Florida without the Legislature's subsequent approval, similar to what the state would encounter with the counseling compact adoption and included rulemaking provision. In the case of the counseling compact, should Florida find that rules adopted by the commission are not acceptable, the compact provides a mechanism for a majority of state legislatures to override commission rules. Furthermore, the state maintains the ability to withdraw from the compact.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

CS/CS/SB 358 authorizes the commission to levy and collect an annual assessment *from each member state* or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff. Such assessments and fees must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount must be allocated based on a formula to be determined by the commission, which must adopt a rule binding on all member states.

B. Private Sector Impact:

The bill could lead to more licensed mental health counselors practicing in Florida. It could also lead to more Florida-licensed mental health counselors practicing through telehealth and providing care to patients in other member states. The fiscal result to the private sector is indeterminate.

C. Government Sector Impact:[34]

The Department of Health (department) reports that its Division of Medical Quality Assurance (MQA) may experience an increase in revenues if the compact is enacted in Florida, as the bill authorizes member states to charge a fee for granting a privilege to practice under the compact. The number of applicants for compact licensure is indeterminate and a fiscal impact cannot be calculated.

[34] *Supra* note 1.

MQA may experience a recurring increase in workload associated with processing applications and issuing initial and renewal licenses to participate in the compact. The department projects needing a minimum of one full-time equivalent (FTE), a Regulatory Specialist III (PG 19), with a projected cost of $71,147 ($48,963/Salary $21,878/Expense $306/HR).

MQA may experience a recurring increase in workload associated with the additional complaints and investigations due to the new compact license. At this time, the impact is indeterminate.

The bill authorizes the commission to levy and collect an annual assessment from each member state. The annual membership cost with the Licensed Professional Counselors Compact is unknown at this time, yet the department anticipates that existing budget authority is adequate to absorb this recurring cost.

If the bill is enacted and if the compact becomes effective, MQA will experience a non-recurring increase in workload and costs associated with updating the Licensing and Enforcement Information Database System, Online Service Portal, Cognitive Virtual Agent, Continuing Education Tracking System, License Verification Search Site, and board website to support multistate licensing. Additionally, MQA will be required to establish a process for sharing information with the data system and update existing data exchange services with the Agency for Health Care Administration.

The total estimated cost for the first year is $71,147 in the following categories:

- Salary- $48,963/Recurring
- Expense- $17,229/Recurring $4,649/Non-Recurring
- Human Resources - $306/Recurring

Section 491.004(5), F.S., requires the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling to adopt rules to implement and enforce the provisions of ch. 491, F.S. Section 1 of the bill creates the Professional Counseling Licensure Compact as s. 491.017, F.S., thereby requiring the Board to adopt rules to implement and enforce the compact, once it becomes effective.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The counseling compact model compact legislation[35] defines a "licensed professional counselor" as a counselor licensed by a member state, regardless of the title used by that State, to independently assess, diagnose, and treat behavioral health conditions." Under Florida law, a mental health counselor, clinical social worker, and a marriage and family therapist may be

[35] Counseling Compact, *Model Legislation* (Dec. 4, 2020) *available at* https://counselingcompact.org/wp-content/uploads/2021/06/Final_Counseling_Compact_With_Cover.pdf (last accessed Oct. 31, 2021).

interpreted to fit the definition of a licensed professional counselor. For this reason, the bill defines a "licensed professional counselor" as "a mental health counselor licensed under chapter 491 or a counselor licensed by a member state, regardless of the title used by that state, to independently assess, diagnose, and treat behavioral health conditions."

This means that in Florida, only a licensed mental health counselor may apply for and be granted a privilege to practice in another member state. In other member states, a professional who meets that member state's definition of a licensed professional counselor, regardless of what title the professional holds, may apply for and be granted a privilege to practice in another member state. To be granted a privilege to practice under the compact, a licensed professional counselor applicant must pass a nationally recognized exam approved by the compact commission, have 60 hours of graduate coursework in specified topic areas or have a master's degree in counseling; and have completed supervised postgraduate professional experience as defined by the commission.

The bill acknowledges that a person from another member state who is granted a privilege to practice in Florida may be licensed as a practitioner other than a mental health counselor. If it is the intent that a licensed professional counselor be granted a privilege to practice in this state only if he or she holds a license that is substantially similar to that of a Florida mental health counselor, then this bill should be amended.

Statutes Affected:

This bill creates section 491.017 of the Florida Statutes.

This bill substantially amends the following sections of the Florida Statutes: 456.073, 456.076, 491.003, 491.004, 491.0045, 491.005, 491.006, 491.009, 491.012, 491.014, 491.0145, 491.0149, and 768.28.

VIII. Additional Information:

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

CS by Appropriations on February 28, 2022:
The committee substitute:

- Revises the circumstances under which the compact commission or the executive committee of the commission may convene in a closed nonpublic meeting to align the provisions with the bill's public records companion, CS/CS/SB 590.
- Amends a provision authorizing the Board to make a one-time exception for mental health counselor, clinical social worker, and marriage and family therapist intern registration requirements for emergency or hardship cases by removing the requirement that the candidate pass a theory and practice examination, effective upon the act becoming a law.
- Amends the practice acts for mental health counselors, a clinical social workers, and marriage and family therapists to replace the words "intern" and "internship" with "associate" and "associateship," effective July 1, 2022.

CS by Health Policy on November 3, 2021:
The CS changes the effective date of the underlying bill from July 1, 2022, to reflect that the bill's provisions become effective only after the compact is enacted into law by 10 states. The CS also requires the Department of Health to notify the Division of Law Revision when the compact has been enacted into law by 10 states.

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 Health Policy; and Senator Rodriguez

588-01039-22 2022358c1

A bill to be entitled

An act relating to the Professional Counselors Licensure Compact; creating s. 491.017, F.S.; creating the Professional Counselors Licensure Compact; providing purposes and objectives; defining terms; specifying requirements for state participation in the compact; specifying duties of member states; authorizing member states to charge a fee for granting a privilege to practice under the compact; specifying that that compact does not affect an individual's ability to apply for, and a member state's ability to grant, a single state license pursuant to the laws of that state; providing construction; providing for recognition of the privilege to practice licensed professional counseling in member states; specifying criteria a licensed professional counselor must meet for the privilege to practice under the compact; providing for the expiration and renewal of the privilege to practice; providing construction; specifying that a licensee with a privilege to practice in a remote state must adhere to the laws and rules of that state; authorizing member states to act on a licensee's privilege to practice under certain circumstances; specifying the consequences and parameters of practice for a licensee whose privilege to practice has been acted on or whose home state license is encumbered; specifying that a licensed professional counselor may hold a home state license in only one member state at a time; specifying

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requirements and procedures for changing a home state license designation; providing construction; authorizing active duty military personnel or their spouses to keep their home state designation during active duty; specifying how such individuals may subsequently change their home state license designation; providing for the recognition of the practice of professional counseling through telehealth in member states; specifying that licensees must adhere to the laws and rules of the remote state in which they provide professional counseling through telehealth; authorizing member states to take adverse actions against licensees and issue subpoenas for hearings and investigations under certain circumstances; providing requirements and procedures for adverse action; authorizing member states to engage in joint investigations under certain circumstances; providing that a licensee's privilege to practice must be deactivated in all member states for the duration of an encumbrance imposed by the licensee's home state; providing for notice to the data system and the licensee's home state of any adverse action taken against a licensee; providing construction; establishing the Counseling Compact Commission; providing for the jurisdiction and venue for court proceedings; providing construction; providing for membership, meetings, and powers of the commission; specifying powers and duties of the commission's executive committee; providing for the

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financing of the commission; providing commission members, officers, executive directors, employees, and representatives immunity from civil liability under certain circumstances; providing exceptions; requiring the commission to defend the commission's members, officers, executive directors, employees, and representative in civil actions under certain circumstances; providing construction; requiring the commission to indemnify and hold harmless such individuals for any settlement or judgment obtained in such actions under certain circumstances; providing for the development of the data system, reporting procedures, and the exchange of specified information between member states; requiring the commission to notify member states of any adverse action taken against a licensee or applicant for licensure; authorizing member states to designate as confidential information provided to the data system; requiring the commission to remove information from the data system under certain circumstances; providing rulemaking procedures for the commission; providing for member state enforcement of the compact; specifying that the compact and commission rules have standing as statutory law in member states; specifying that the commission is entitled to receive notice of process, and has standing to intervene, in certain judicial and administrative proceedings; rendering certain judgments and orders void as to the commission, the compact, or commission rules under certain

circumstances; providing for defaults and termination of compact membership; providing procedures for the resolution of certain disputes; providing for commission enforcement of the compact; providing for remedies; providing construction; providing for implementation of, withdrawal from, and amendment to the compact; providing construction; specifying that licensees practicing in a remote state under the compact must adhere to the laws and rules of the remote state; providing construction; specifying that the compact, commission rules, and commission actions are binding on member states; providing construction and severability; amending s. 456.073, F.S.; requiring the Department of Health to report certain investigative information to the data system; amending s. 456.076, F.S.; requiring monitoring contracts for impaired practitioners participating in treatment programs to contain certain terms; amending s. 491.004, F.S.; requiring the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling to appoint an individual to serve as the state's delegate on the commission; amending ss. 491.005 and 491.006, F.S.; exempting certain persons from licensure requirements; amending s. 491.009, F.S.; authorizing certain disciplinary action under the compact for specified prohibited acts; amending s. 768.28, F.S.; designating the state delegate and other members or employees of the commission as state agents for the purpose of applying waivers of sovereign

immunity; requiring the commission to pay certain claims or judgments; authorizing the commission to maintain insurance coverage to pay such claims or judgments; requiring the department to notify the Division of Law Revision upon enactment of the compact into law by 10 states; providing a contingent effective date.

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

Section 1. Section 491.017, Florida Statutes, is created to read:

491.017 Professional Counselors Licensure Compact.—The Professional Counselors Licensure Compact is hereby enacted and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I

PURPOSE

The compact is designed to achieve the following purposes and objectives:

(1) Facilitate interstate practice of licensed professional counseling to increase public access to professional counseling services by providing for the mutual recognition of other member state licenses.

(2) Enhance the member states' ability to protect the public's health and safety.

(3) Encourage the cooperation of member states in regulating multistate practice of licensed professional

counselors.

(4) Support spouses of relocating active duty military personnel.

(5) Facilitate the exchange of information between member states regarding licensure, investigations, adverse actions, and disciplinary history of licensed professional counselors.

(6) Allow for the use of telehealth technology to facilitate increased access to professional counseling services.

(7) Support the uniformity of professional counseling licensure requirements throughout member states to promote public safety and public health benefits.

(8) Provide member states with the authority to hold a licensed professional counselor accountable for meeting all state practice laws in the state in which the client is located at the time care is rendered through the mutual recognition of member state licenses.

(9) Eliminate the necessity for licensed professional counselors to hold licenses in multiple states and provide opportunities for interstate practice by licensed professional counselors who meet uniform licensure requirements.

ARTICLE II

DEFINITIONS

As used in this compact, the term:

(1) "Active duty military" means full-time duty status in the active uniformed service of the United States, including, but not limited to, members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. chapters 1209 and 1211.

(2) "Adverse action" means any administrative, civil, or

criminal action authorized by a state's laws which is imposed by a licensing board or other authority against a licensed professional counselor, including actions against an individual's license or privilege to practice, such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, issuance of a cease and desist action, or any other encumbrance on licensure affecting a licensed professional counselor's authorization to practice.

(3) "Alternative program" means a nondisciplinary monitoring or practice remediation process approved by a professional counseling licensing board to address impaired practitioners.

(4) "Continuing education" means a requirement, as a condition of license renewal, to participate in or complete educational and professional activities relevant to the licensee's practice or area of work.

(5) "Counseling Compact Commission" or "commission" means the national administrative body whose membership consists of all states that have enacted the compact.

(6) "Current significant investigative information" means:

(a) Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the licensed professional counselor to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

(b) Investigative information that indicates that the licensed professional counselor represents an immediate threat to public health and safety, regardless of whether the licensed

professional counselor has been notified and had an opportunity to respond.

(7) "Data system" means a repository of information about licensees, including, but not limited to, information relating to continuing education, examinations, licensure statuses, investigations, the privilege to practice, and adverse actions.

(8) "Encumbered license" means a license in which an adverse action restricts the practice of licensed professional counseling by the licensee and said adverse action has been reported to the National Practitioner Data Bank.

(9) "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of licensed professional counseling by a licensing board.

(10) "Executive committee" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.

(11) "Home state" means the member state that is the licensee's primary state of residence.

(12) "Impaired practitioner" means an individual who has a condition that may impair his or her ability to safely practice as a licensed professional counselor without intervention. Such impairment may include, but is not limited to, alcohol or drug dependence, mental health conditions, and neurological or physical conditions.

(13) "Investigative information" means information, records, or documents received or generated by a professional counseling licensing board pursuant to an investigation.

(14) "Jurisprudence requirement," if required by a member state, means the assessment of an individual's knowledge of the

laws and rules governing the practice of professional counseling in a state.

(15) "Licensed professional counselor" means a mental health counselor licensed under chapter 491 or a counselor licensed by a member state, regardless of the title used by that state, to independently assess, diagnose, and treat behavioral health conditions.

(16) "Licensee" means an individual who currently holds an authorization from the state to practice as a licensed professional counselor.

(17) "Licensing board" means the agency of a state, or equivalent, that is responsible for the licensing and regulation of licensed professional counselors.

(18) "Member state" means a state that has enacted the compact.

(19) "Privilege to practice" means a legal authorization, which is equivalent to a license, authorizing the practice of professional counseling in a remote state.

(20) "Professional counseling" means the assessment, diagnosis, and treatment of behavioral health conditions by a licensed professional counselor.

(21) "Remote state" means a member state, other than the home state, where a licensee is exercising or seeking to exercise the privilege to practice.

(22) "Rule" means a regulation adopted by the commission which has the force of law.

(23) "Single state license" means a licensed professional counselor license issued by a member state which authorizes practice only within the issuing state and does not include a

privilege to practice in any other member state.

(24) "State" means any state, commonwealth, district, or territory of the United States of America which regulates the practice of professional counseling.

(25) "Telehealth" means the application of telecommunication technology to deliver professional counseling services remotely to assess, diagnose, and treat behavioral health conditions.

(26) "Unencumbered license" means a license that authorizes a licensed professional counselor to engage in the full and unrestricted practice of professional counseling.

ARTICLE III

STATE PARTICIPATION

(1) To participate in the compact, a state must currently do all of the following:

(a) License and regulate licensed professional counselors.

(b) Require licensees to pass a nationally recognized exam approved by the commission.

(c) Require licensees to have a 60 semester hour, or 90 quarter hour, master's degree in counseling or 60 semester hours, or 90 quarter hours, of graduate coursework including all of the following topic areas:

1. Professional counseling orientation and ethical practice.

2. Social and cultural diversity.

3. Human growth and development.

4. Career development.

5. Counseling and helping relationships.

6. Group counseling and group work.

7. Diagnosis, assessment, testing, and treatment.

8. Research and program evaluation.

9. Other areas as determined by the commission.

(d) Require licensees to complete a supervised postgraduate professional experience as defined by the commission.

(e) Have a mechanism in place for receiving and investigating complaints about licensees.

(2) A member state shall do all of the following:

(a) Participate fully in the commission's data system, including using the commission's unique identifier as defined in rules adopted by the commission.

(b) Notify the commission, in compliance with the terms of the compact and rules adopted by the commission, of any adverse action or the availability of investigative information regarding a licensee.

(c) Implement or utilize procedures for considering the criminal history records of applicants for an initial privilege to practice. These procedures must include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records.

1. A member state must fully implement a criminal background check requirement, within a timeframe established by rule, by receiving the results of the Federal Bureau of Investigation record search and shall use the results in making licensure decisions.

2. Communication between a member state and the commission and among member states regarding the verification of eligibility for licensure through the compact may not include any information received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a member state under Public Law 92-544.

(d) Comply with the rules adopted by the commission.

(e) Require an applicant to obtain or retain a license in the home state and meet the home state's qualifications for licensure or renewal of licensure, as well as all other applicable state laws.

(f) Grant the privilege to practice to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the compact and rules adopted by the commission.

(g) Provide for the attendance of the state's commissioner at the commission meetings.

(3) Member states may charge a fee for granting the privilege to practice.

(4) Individuals not residing in a member state may continue to apply for a member state's single state license as provided under the laws of each member state. However, the single state license granted to these individuals may not be recognized as granting a privilege to practice professional counseling under the compact in any other member state.

(5) Nothing in this compact affects the requirements established by a member state for the issuance of a single state license.

(6) A professional counselor license issued by a home state

to a resident of that state must be recognized by each member state as authorizing that licensed professional counselor to practice professional counseling, under a privilege to practice, in each member state.

ARTICLE IV

PRIVILEGE TO PRACTICE

(1) To exercise the privilege to practice under the terms and provisions of the compact, the licensee must meet all of the following criteria:

(a) Hold a license in the home state.

(b) Have a valid United States Social Security Number or national provider identifier.

(c) Be eligible for a privilege to practice in any member state in accordance with subsections (4), (7), and (8).

(d) Have not had any encumbrance or restriction against any license or privilege to practice within the preceding 2 years.

(e) Notify the commission that the licensee is seeking the privilege to practice within a remote state.

(f) Pay any applicable fees, including any state fee, for the privilege to practice.

(g) Meet any continuing education requirements established by the home state.

(h) Meet any jurisprudence requirements established by the remote state in which the licensee is seeking a privilege to practice.

(i) Report to the commission any adverse action, encumbrance, or restriction on a license taken by any nonmember state within 30 days after the action is taken.

(2) The privilege to practice is valid until the expiration date of the home state license. The licensee must continue to meet the criteria specified in subsection (1) to renew the privilege to practice in the remote state.

(3) For purposes of the compact, the practice of professional counseling occurs in the state where the client is located at the time of the counseling services. The compact does not affect the regulatory authority of states to protect public health and safety through their own system of state licensure.

(4) A licensee providing professional counseling in a remote state under the privilege to practice must adhere to the laws and regulations of the remote state.

(5) A licensee providing professional counseling services in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's privilege to practice in the remote state for a specified period of time, impose fines, or take any other action necessary to protect the health and safety of its residents. The licensee may be ineligible for a privilege to practice in any member state until the specific time for removal has passed and all fines are paid.

(6) If a home state license is encumbered, a licensee loses the privilege to practice in any remote state until both of the following conditions are met:

(a) The home state license is no longer encumbered.

(b) The licensee has not had any encumbrance or restriction against any license or privilege to practice within the preceding 2 years.

(7) Once an encumbered license in the licensee's home state

is restored to good standing, the licensee may obtain a privilege to practice in any remote state if he or she meets the requirements of subsection (1).

(8) If a licensee's privilege to practice in any remote state is removed, the individual may lose the privilege to practice in all other remote states until all of the following conditions are met:

(a) The specified period of time for which the privilege to practice was removed has ended.

(b) The licensee has paid all fines imposed.

(c) The licensee has not had any encumbrance or restriction against any license or privilege to practice within the preceding 2 years.

(9) Once the requirements of subsection (8) have been met, the licensee may obtain a privilege to practice in a remote state if he or she meets the requirements in subsection (1).

ARTICLE V

OBTAINING A NEW HOME STATE LICENSE BASED ON A PRIVILEGE TO PRACTICE

(1) A licensed professional counselor may hold a home state license, which allows for a privilege to practice in other member states, in only one member state at a time.

(2) If a licensed professional counselor changes his or her primary state of residence by moving between two member states, then the licensed professional counselor must file an application for obtaining a new home state license based on a privilege to practice, pay all applicable fees, and notify the current and new home state in accordance with applicable rules

adopted by the commission.

(3) Upon receipt of an application for obtaining a new home state license based on a privilege to practice, the new home state must verify that the licensed professional counselor meets the criteria outlined in article IV through the data system. The new home state does not need to seek primary source verification for information obtained from the data system, except for the following:

(a) A Federal Bureau of Investigation fingerprint-based criminal background check, if not previously performed or updated pursuant to applicable rules adopted by the commission in accordance with Public Law 92-544;

(b) Any other criminal background check as required by the new home state; and

(c) Proof of completion of any requisite jurisprudence requirements of the new home state.

(4) The former home state shall convert the former home state license into a privilege to practice once the new home state has activated the new home state license in accordance with applicable rules adopted by the commission.

(5) Notwithstanding any other provision of the compact, if the licensed professional counselor does not meet the criteria in article IV, the new home state may apply its own requirements for issuing a new single state license.

(6) The licensed professional counselor must pay all applicable fees to the new home state in order to be issued a new home state license for purposes of the compact.

(7) If a licensed professional counselor changes his or her primary state of residence by moving from a member state to a

nonmember state or from a nonmember state to a member state, the new state's own criteria apply for issuance of a single state license in the new state.

(8) The compact does not interfere with a licensee's ability to hold a single state license in multiple states. However, for the purposes of the compact, a licensee may have only one home state license.

(9) The compact does not affect the requirements established by a member state for the issuance of a single state license.

ARTICLE VI

ACTIVE DUTY MILITARY PERSONNEL AND THEIR SPOUSES

Active duty military personnel, or their spouse, shall designate a home state where the individual has a current license in good standing. The individual may retain the home state license designation during the period the service member is on active duty. Subsequent to designating a home state, the individual may change his or her home state only through application for licensure in the new state or through the process outlined in article V.

ARTICLE VII

COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

(1) Member states shall recognize the right of a licensed professional counselor, licensed by a home state in accordance with article III and under rules adopted by the commission, to practice professional counseling in any member state through telehealth under a privilege to practice as provided in the

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compact and rules adopted by the commission.

(2) A licensee providing professional counseling services in a remote state through telehealth under the privilege to practice must adhere to the laws and rules of the remote state.

ARTICLE VIII

ADVERSE ACTIONS

(1) In addition to the other powers conferred by state law, a remote state has the authority, in accordance with existing state due process law, to do any of the following:

(a) Take adverse action against a licensed professional counselor's privilege to practice within that member state.

(b) Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses or the production of evidence. Subpoenas issued by a licensing board in a member state for the attendance and testimony of witnesses or the production of evidence from another member state must be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses or evidence is located.

(2) Only the home state has the power to take adverse action against a licensed professional counselor's license issued by the home state.

(3) For purposes of taking adverse action, the home state shall give the same priority and effect to reported conduct

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received from a member state as it would if the conduct had occurred within the home state. The home state shall apply its own state laws to determine appropriate action in such cases.

(4) The home state shall complete any pending investigations of a licensed professional counselor who changes primary state of residence during the course of the investigations. The home state may also take appropriate action and shall promptly report the conclusions of the investigations to the administrator of the data system. The administrator of the data system shall promptly notify the new home state of any adverse actions.

(5) A member state, if authorized by state law, may recover from the affected licensed professional counselor the costs of investigations and dispositions of any cases resulting from adverse action taken against that licensed professional counselor.

(6) A member state may take adverse action against a licensed professional counselor based on the factual findings of a remote state, provided that the member state follows its own statutory procedures for taking adverse action.

(7)(a) In addition to the authority granted to a member state by its respective professional counseling practice act or other applicable state law, any member state may participate with other member states in joint investigations of licensees.

(b) Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.

(8) If adverse action is taken by the home state against the license of a professional counselor, the licensed

professional counselor's privilege to practice in all other member states must be deactivated until all encumbrances have been removed from the home state license. All home state disciplinary orders that impose adverse action against the license of a professional counselor must include a statement that the licensed professional counselor's privilege to practice is deactivated in all member states while the order is in effect.

(9) If a member state takes adverse action, it must promptly notify the administrator of the data system. The administrator shall promptly notify the licensee's home state of any adverse actions by remote states.

(10) Nothing in the compact overrides a member state's decision to allow a licensed professional counselor to participate in an alternative program in lieu of adverse action.

ARTICLE IX

ESTABLISHMENT OF COUNSELING COMPACT COMMISSION

(1) COMMISSION CREATED.—The compact member states hereby create and establish a joint public agency known as the Counseling Compact Commission.

(a) The commission is an instrumentality of the compact states.

(b) Venue is proper, and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent that it adopts or consents to participate in alternative dispute resolution proceedings.

(c) Nothing in the compact may be construed to be a waiver of sovereign immunity.

(2) MEMBERSHIP.—

(a) The commission shall consist of one voting delegate, appointed by each member state's licensing board. The commission, by rule, shall establish a term of office for delegates and may establish term limits.

(b) The delegate must be either:

1. A current member of the licensing board at the time of appointment, who is a licensed professional counselor or public member; or

2. An administrator of the licensing board.

(c) A delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

(d) The member state licensing board must fill any vacancy occurring on the commission within 60 days.

(e) Each delegate is entitled to one vote with regard to the adoption of rules and creation of bylaws and shall otherwise participate in the business and affairs of the commission.

(f) A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

(3) MEETINGS OF THE COMMISSION.—

(a) The commission shall meet at least once during each calendar year. Additional meetings must be held as set forth in the bylaws.

(b) All meetings must be open to the public, and public

notice of meetings must be given in the same manner as required under the rulemaking provisions in article XI.

(c) 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:

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.

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

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

(e) 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.

(4) POWERS.—The commission may do any of the following:

(a) Establish the fiscal year of the commission.

(b) Establish bylaws.

(c) Maintain its financial records in accordance with the bylaws.

(d) Meet and take actions that are consistent with the compact and bylaws.

(e) Adopt rules that are binding to the extent and in the manner provided for in the compact.

(f) Initiate and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state licensing board to sue or be sued under applicable law is not affected.

(g) Purchase and maintain insurance and bonds.

(h) Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state.

(i) Hire employees and elect or appoint officers; fix compensation for, define duties of, and grant appropriate authority to such employees and officers to carry out the purposes of the compact; and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters.

(j) Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and receive, utilize, and dispose of the same, provided that at all times the commission avoids any appearance of impropriety or conflict of interest.

(k) Lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold, improve, or use, any property, real, personal, or mixed, provided that at all times the commission avoids any appearance of impropriety or conflict of interest.

(l) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(m) Establish a budget and make expenditures.

(n) Borrow money.

(o) Appoint committees, including standing committees consisting of commission members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in the compact and bylaws.

(p) Provide information to, receive information from, and

cooperate with law enforcement agencies.

(q) Establish and elect an executive committee.

(r) Perform any other function that may be necessary or appropriate to achieve the purposes of the compact and is consistent with the state regulation of professional counseling licensure and practice.

(5) THE EXECUTIVE COMMITTEE.—

(a) The executive committee may act on behalf of the commission according to the terms of the compact and shall consist of up to 11 members, as follows:

1. Seven voting members who are elected by the commission from the current membership of the commission.

2. Up to four ex officio, nonvoting members from four recognized national professional counselor organizations. The ex officio members shall be selected by their respective organizations.

(b) The commission may remove any member of the executive committee as provided in its bylaws.

(c) The executive committee shall meet at least annually.

(d) The executive committee shall do all of the following:

1. Make recommendations to the commission for any changes to the rules, bylaws, or compact legislation; fees paid by compact member states; and any fees charged to licensees for the privilege to practice.

2. Ensure compact administration services are appropriately provided, contractually or otherwise.

3. Prepare and recommend the budget.

4. Maintain financial records on behalf of the commission.

5. Monitor compact compliance of member states and provide

compliance reports to the commission.

6. Establish additional committees as necessary.

7. Perform any other duties provided for in the rules or bylaws.

(6) FINANCING OF THE COMMISSION.—

(a) The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The commission may accept any appropriate revenue sources, donations, or grants of money, equipment, supplies, materials, or services.

(c) The commission may levy and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff. Such assessments and fees must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount must be allocated based on a formula to be determined by the commission, which shall adopt a rule binding on all member states.

(d) The commission may not incur obligations of any kind before securing the funds adequate to meet the same; nor may the commission pledge the credit of any of the member states, except by and with the authority of the member state.

(e) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission must be

audited annually by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the commission.

(7) QUALIFIED IMMUNITY, DEFENSE, AND INDEMNIFICATION.—

(a) The members, officers, executive director, employees, and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities. This paragraph may not be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

(b) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct. This paragraph may not be construed to prohibit that person from retaining his or her own counsel.

(c) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative

of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

ARTICLE X

DATA SYSTEM

(1) The commission shall provide for the development, operation, and maintenance of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed professional counselors in member states.

(2) 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:

(a) Identifying information.

(b) Licensure data.

(c) Adverse actions against a license or privilege to practice.

(d) Nonconfidential information related to alternative program participation.

(e) Any denial of application for licensure and the reason for such denial.

(f) Current significant investigative information.

(g) Other information that may facilitate the administration of the compact, as determined by the rules of the commission.

(3) Investigative information pertaining to a licensee in any member state may be made available only to other member states.

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

(5) 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.

(6) Any information submitted to the data system which is subsequently required to be expunged by the laws of the member state reporting the information must be removed from the data system.

ARTICLE XI

RULEMAKING

(1) The commission shall adopt reasonable rules to effectively and efficiently achieve the purposes of the compact. If, however, the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the compact, or the powers granted hereunder, then such an action by the commission is invalid and has no force or effect.

(2) The commission shall exercise its rulemaking powers

pursuant to the criteria set forth in this article and the rules adopted thereunder. Rules and amendments become binding as of the date specified in each rule or amendment.

(3) If a majority of the legislatures of the member states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact within 4 years after the date of adoption of the rule, such rule does not have further force and effect in any member state.

(4) Rules or amendments to the rules must be adopted at a regular or special meeting of the commission.

(5) Before adoption of a final rule by the commission, and at least 30 days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:

(a) On the website of the commission or other publicly accessible platform; and

(b) On the website of each member state's professional counseling licensing board or other publicly accessible platform or in the publication in which each state would otherwise publish proposed rules.

(6) The notice of proposed rulemaking must include:

(a) The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

(b) The text of the proposed rule or amendment and the reason for the proposed rule;

(c) A request for comments on the proposed rule from any interested person; and

(d) The manner in which interested persons may submit notice to the commission of their intention to attend the public

hearing and any written comments.

(7) Before adoption of a proposed rule, the commission must allow persons to submit written data, facts, opinions, and arguments, which must be made available to the public.

(8) The commission shall grant an opportunity for a public hearing before it adopts a rule or an amendment if a hearing is requested by:

(a) At least 25 persons who submit comments independently of each other;

(b) A state or federal governmental subdivision or agency; or

(c) An association that has at least 25 members.

(9) If a hearing is held on the proposed rule or amendment, the commission must publish the place, time, and date of the scheduled public hearing. If the hearing is held through electronic means, the commission must publish the mechanism for access to the electronic hearing.

(a) All persons wishing to be heard at the hearing must notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing at least 5 business days before the scheduled date of the hearing.

(b) Hearings must be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

(c) All hearings must be recorded. A copy of the recording must be made available on request.

(d) This section may not be construed to require a separate hearing on each rule. Rules may be grouped at hearings required

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by this section for the convenience of the commission.

(10) If the commission does not receive a written notice of intent to attend the public hearing by interested parties, the commission may proceed with adoption of the proposed rule without a public hearing.

(11) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

(12) The commission, by majority vote of all members, shall take final action on the proposed rule and shall determine the effective date of the rule based on the rulemaking record and the full text of the rule.

(13) Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the compact and in this section are retroactively applied to the rule as soon as reasonably possible, but no later than 90 days after the effective date of the rule. For purposes of this subsection, an emergency rule is one that must be adopted immediately in order to:

(a) Meet an imminent threat to public health, safety, or welfare;

(b) Prevent a loss of commission or member state funds;

(c) Meet a deadline for the adoption of an administrative rule established by federal law or rule; or

(d) Protect public health and safety.

(14) The commission or an authorized committee of the

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commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revision must be posted on the website of the commission. Revisions are subject to challenge by any person for a period of 30 days after posting. A revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge must be made in writing and delivered to the chair of the commission before the end of the notice period. If a challenge is not made, the revision takes effect without further action. If a revision is challenged, the revision may not take effect without the approval of the commission.

ARTICLE XII

OVERSIGHT; DEFAULT, TECHNICAL ASSISTANCE, AND TERMINATION; DISPUTE RESOLUTION; AND ENFORCEMENT

(1) OVERSIGHT.—

(a) The executive, legislative, and judicial branches of state government in each member state shall enforce the compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The compact and the rules adopted thereunder have standing as statutory law.

(b) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of the compact which may affect the powers, responsibilities, or actions of the commission.

(c) The commission is entitled to receive service of

process in any judicial or administrative proceeding specified in paragraph (b) and has standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission renders a judgment or an order void as to the commission, the compact, or adopted rules.

(2) DEFAULT, TECHNICAL ASSISTANCE, AND TERMINATION.—

(a) If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the compact or adopted rules, the commission must:

1. Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default, and any other action to be taken by the commission; and

2. Provide remedial training and specific technical assistance regarding the default.

(b) If a state in default fails to cure the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the member states, and all rights, privileges, and benefits conferred by the compact are terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

(c) Termination of membership in the compact may be imposed only after all other means of securing compliance have been exhausted. The commission shall submit a notice of intent to suspend or terminate a defaulting member state to that state's governor, to the majority and minority leaders of that state's legislature, and to each member state.

(d) A member state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

(e) The commission may not bear any costs related to a member state that is found to be in default or that has been terminated from the compact, unless agreed upon in writing between the commission and the defaulting member state.

(f) The defaulting member state may appeal the action of the commission by petitioning the United States District Court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing party must be awarded all costs of such litigation, including reasonable attorney fees.

(3) DISPUTE RESOLUTION.—

(a) Upon request by a member state, the commission shall attempt to resolve disputes related to the compact which arise among member states and between member and nonmember states.

(b) The commission shall adopt rules providing for both mediation and binding dispute resolution for disputes as appropriate.

(4) ENFORCEMENT.—

(a) The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of the compact.

(b) By majority vote, the commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce

compliance with the compact and its adopted rules and bylaws. The relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing party must be awarded all costs of such litigation, including reasonable attorney fees.

(c) The remedies under this article are not the exclusive remedies to the commission. The commission may pursue any other remedies available under federal or state law.

ARTICLE XIII

DATE OF IMPLEMENTATION OF THE COUNSELING COMPACT COMMISSION AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

(1) The compact becomes effective on the date on which the compact is enacted into law in the 10th member state. The provisions that become effective at that time are limited to the powers granted to the commission relating to assembly and the adoption of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary for implementation and administration of the compact.

(2) Any state that joins the compact subsequent to the commission's initial adoption of the rules is subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission has the full force and effect of law on the day the compact becomes law in that state.

(3) Any member state may withdraw from the compact by enacting a statute repealing the compact.

(a) A member state's withdrawal does not take effect until 6 months after enactment of the repealing statute.

(b) Withdrawal does not affect the continuing requirement of the withdrawing state's professional counseling licensing board to comply with the investigative and adverse action reporting requirements of the compact before the effective date of withdrawal.

(4) The compact may not be construed to invalidate or prevent any professional counseling licensure agreement or other cooperative arrangement between a member state and a nonmember state which does not conflict with the compact.

(5) The compact may be amended by the member states. An amendment to the compact is not effective and binding upon any member state until it is enacted into the laws of all member states.

ARTICLE XIV

BINDING EFFECT OF COMPACT AND OTHER LAWS

(1) A licensee providing professional counseling services in a remote state under the privilege to practice shall adhere to the laws and regulations, including scope of practice, of the remote state.

(2) The compact does not prevent the enforcement of any other law of a member state which is not inconsistent with the compact.

(3) Any laws in a member state which conflict with the compact are superseded to the extent of the conflict.

(4) Any lawful actions of the commission, including all rules and bylaws properly adopted by the commission, are binding on the member states.

(5) All permissible agreements between the commission and the member states are binding in accordance with their terms.

(6) If any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

ARTICLE XV

CONSTRUCTION AND SEVERABILITY

The compact must be liberally construed so as to effectuate the purposes thereof. The provisions of the compact are severable, and if any phrase, clause, sentence, or provision of the compact is declared to be contrary to the constitution of any member state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of the compact and the applicability thereof to any government, agency, person, or circumstance is not affected thereby. If the compact is held contrary to the constitution of any member state, the compact remains in full force and effect as to the remaining member states and in full force and effect as to the member state affected as to all severable matters.

Section 2. Subsection (10) of section 456.073, Florida Statutes, is amended to read:

456.073 Disciplinary proceedings.—Disciplinary proceedings for each board shall be within the jurisdiction of the department.

(10) The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from s. 119.07(1) until 10 days after probable cause has been

found to exist by the probable cause panel or by the department, or until the regulated professional or subject of the investigation waives his or her privilege of confidentiality, whichever occurs first. The department shall report any significant investigation information relating to a nurse holding a multistate license to the coordinated licensure information system pursuant to s. 464.0095, and any significant investigatory information relating to a health care practitioner practicing under the Professional Counselors Licensure Compact to the data system pursuant to s. 491.017. Upon completion of the investigation and a recommendation by the department to find probable cause, and pursuant to a written request by the subject or the subject's attorney, the department shall provide the subject an opportunity to inspect the investigative file or, at the subject's expense, forward to the subject a copy of the investigative file. Notwithstanding s. 456.057, the subject may inspect or receive a copy of any expert witness report or patient record connected with the investigation if the subject agrees in writing to maintain the confidentiality of any information received under this subsection until 10 days after probable cause is found and to maintain the confidentiality of patient records pursuant to s. 456.057. The subject may file a written response to the information contained in the investigative file. Such response must be filed within 20 days of mailing by the department, unless an extension of time has been granted by the department. This subsection does not prohibit the department from providing such information to any law enforcement agency or to any other regulatory agency.

Section 3. Subsection (5) of section 456.076, Florida

Statutes, is amended to read:

456.076 Impaired practitioner programs.—

(5) A consultant shall enter into a participant contract with an impaired practitioner and shall establish the terms of monitoring and shall include the terms in a participant contract. In establishing the terms of monitoring, the consultant may consider the recommendations of one or more approved evaluators, treatment programs, or treatment providers. A consultant may modify the terms of monitoring if the consultant concludes, through the course of monitoring, that extended, additional, or amended terms of monitoring are required for the protection of the health, safety, and welfare of the public. If the impaired practitioner is a health care practitioner practicing under the Professional Counselors Licensure Compact pursuant to s. 491.017, the terms of the monitoring contract must include the impaired practitioner's withdrawal from all practice under the compact.

Section 4. Subsection (8) is added to section 491.004, Florida Statutes, to read:

491.004 Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling.—

(8) The board shall appoint an individual to serve as the state's delegate on the Counseling Compact Commission, as required under s. 491.017.

Section 5. Subsection (6) is added to section 491.005, Florida Statutes, to read:

491.005 Licensure by examination.—

(6) EXEMPTION.—A person licensed as a clinical social worker, marriage and family therapist, or mental health

counselor in another state who is practicing under the Professional Counselors Licensure Compact pursuant to s. 491.017, and only within the scope provided therein, is exempt from the licensure requirements of this section, as applicable.

Section 6. Subsection (3) is added to section 491.006, Florida Statutes, to read:

491.006 Licensure or certification by endorsement.—

(3) A person licensed as a clinical social worker, marriage and family therapist, or mental health counselor in another state who is practicing under the Professional Counselors Licensure Compact pursuant to s. 491.017, and only within the scope provided therein, is exempt from the licensure requirements of this section, as applicable.

Section 7. Section 491.009, Florida Statutes, is amended to read:

491.009 Discipline.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2) or s. 491.017:

(a) Attempting to obtain, obtaining, or renewing a license, registration, or certificate under this chapter by bribery or fraudulent misrepresentation or through an error of the board or the department.

(b) Having a license, registration, or certificate to practice a comparable profession revoked, suspended, or otherwise acted against, including the denial of certification or licensure by another state, territory, or country.

(c) Being convicted or found guilty of, regardless of adjudication, or having entered a plea of nolo contendere to, a

crime in any jurisdiction which directly relates to the practice of his or her profession or the ability to practice his or her profession. However, in the case of a plea of nolo contendere, the board shall allow the person who is the subject of the disciplinary proceeding to present evidence in mitigation relevant to the underlying charges and circumstances surrounding the plea.

(d) False, deceptive, or misleading advertising or obtaining a fee or other thing of value on the representation that beneficial results from any treatment will be guaranteed.

(e) Advertising, practicing, or attempting to practice under a name other than one's own.

(f) Maintaining a professional association with any person who the applicant, licensee, registered intern, or certificateholder knows, or has reason to believe, is in violation of this chapter or of a rule of the department or the board.

(g) Knowingly aiding, assisting, procuring, or advising any nonlicensed, nonregistered, or noncertified person to hold himself or herself out as licensed, registered, or certified under this chapter.

(h) Failing to perform any statutory or legal obligation placed upon a person licensed, registered, or certified under this chapter.

(i) Willfully making or filing a false report or record; failing to file a report or record required by state or federal law; willfully impeding or obstructing the filing of a report or record; or inducing another person to make or file a false report or record or to impede or obstruct the filing of a report

or record. Such report or record includes only a report or record which requires the signature of a person licensed, registered, or certified under this chapter.

(j) Paying a kickback, rebate, bonus, or other remuneration for receiving a patient or client, or receiving a kickback, rebate, bonus, or other remuneration for referring a patient or client to another provider of mental health care services or to a provider of health care services or goods; referring a patient or client to oneself for services on a fee-paid basis when those services are already being paid for by some other public or private entity; or entering into a reciprocal referral agreement.

(k) Committing any act upon a patient or client which would constitute sexual battery or which would constitute sexual misconduct as defined pursuant to s. 491.0111.

(l) Making misleading, deceptive, untrue, or fraudulent representations in the practice of any profession licensed, registered, or certified under this chapter.

(m) Soliciting patients or clients personally, or through an agent, through the use of fraud, intimidation, undue influence, or a form of overreaching or vexatious conduct.

(n) Failing to make available to a patient or client, upon written request, copies of tests, reports, or documents in the possession or under the control of the licensee, registered intern, or certificateholder which have been prepared for and paid for by the patient or client.

(o) Failing to respond within 30 days to a written communication from the department or the board concerning any investigation by the department or the board, or failing to make

available any relevant records with respect to any investigation about the licensee's, registered intern's, or certificateholder's conduct or background.

(p) Being unable to practice the profession for which he or she is licensed, registered, or certified under this chapter with reasonable skill or competence as a result of any mental or physical condition or by reason of illness; drunkenness; or excessive use of drugs, narcotics, chemicals, or any other substance. In enforcing this paragraph, upon a finding by the State Surgeon General, the State Surgeon General's designee, or the board that probable cause exists to believe that the licensee, registered intern, or certificateholder is unable to practice the profession because of the reasons stated in this paragraph, the department shall have the authority to compel a licensee, registered intern, or certificateholder to submit to a mental or physical examination by psychologists, physicians, or other licensees under this chapter, designated by the department or board. If the licensee, registered intern, or certificateholder refuses to comply with such order, the department's order directing the examination may be enforced by filing a petition for enforcement in the circuit court in the circuit in which the licensee, registered intern, or certificateholder resides or does business. The licensee, registered intern, or certificateholder against whom the petition is filed may ~~shall~~ not be named or identified by initials in any public court records or documents, and the proceedings shall be closed to the public. The department shall be entitled to the summary procedure provided in s. 51.011. A licensee, registered intern, or certificateholder affected under

this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume the competent practice for which he or she is licensed, registered, or certified with reasonable skill and safety to patients.

(q) Performing any treatment or prescribing any therapy which, by the prevailing standards of the mental health professions in the community, would constitute experimentation on human subjects, without first obtaining full, informed, and written consent.

(r) Failing to meet the minimum standards of performance in professional activities when measured against generally prevailing peer performance, including the undertaking of activities for which the licensee, registered intern, or certificateholder is not qualified by training or experience.

(s) Delegating professional responsibilities to a person whom the licensee, registered intern, or certificateholder knows or has reason to know is not qualified by training or experience to perform such responsibilities.

(t) Violating a rule relating to the regulation of the profession or a lawful order of the department or the board previously entered in a disciplinary hearing.

(u) Failure of the licensee, registered intern, or certificateholder to maintain in confidence a communication made by a patient or client in the context of such services, except as provided in s. 491.0147.

(v) Making public statements which are derived from test data, client contacts, or behavioral research and which identify or damage research subjects or clients.

(w) Violating any provision of this chapter or chapter 456,

or any rules adopted pursuant thereto.

(2)(a) The board or, in the case of certified master social workers, the department may enter an order denying licensure or imposing any of the penalties authorized in s. 456.072(2) against any applicant for licensure or any licensee who violates subsection (1) or s. 456.072(1).

(b) The board may take adverse action against a clinical social worker's, a marriage and family therapist's, or a mental health counselor's privilege to practice under the Professional Counselors Licensure Compact pursuant to s. 491.017 and may impose any of the penalties in s. 456.072(2) if the clinical social worker, marriage and family therapist, or mental health counselor commits an act specified in subsection (1) or s. 456.072(1).

Section 8. Paragraph (h) is added to subsection (10) of section 768.28, Florida Statutes, to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; civil liability for damages caused during a riot; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(10)

(h) For purposes of this section, the individual appointed under s. 491.004(8) as the state's delegate on the Counseling Compact Commission, when serving in that capacity pursuant to s. 491.017, and any administrator, officer, executive director, employee, or representative of the commission, when acting within the scope of his or her employment, duties, or responsibilities in this state, is considered an agent of the state. The commission shall pay any claims or judgments pursuant

to this section and may maintain insurance coverage to pay any such claims or judgments.

Section 9. The Department of Health shall notify the Division of Law Revision upon enactment of the Professional Counselors Licensure Compact into law by 10 states.

Section 10. This act shall take effect upon enactment of the Professional Counselors Licensure Compact into law by 10 states.

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

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 22, 2022

I respectfully request that **CS/CS/SB 358**, relating to Professional Counselors Licensure Compact, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Ana Maria Rodriguez
Florida Senate, District 39

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 Appropriations

BILL:	SB 390
INTRODUCER:	Senator Book and others
SUBJECT:	Restraint of Students with Disabilities in Public Schools
DATE:	February 27, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brick	Bouck	ED	**Favorable**
2.	Grace	Elwell	AED	**Recommend: Favorable**
3.	Grace	Sadberry	AP	**Favorable**

I. Summary:

SB 390 prohibits the use of mechanical restraint on students with disabilities by school personnel except for school resource officers, school safety officers, school guardians, or school security guards, who may use mechanical restraint in the exercise of their duties to restrain students in grades 6 through 12.

The bill does not have an impact on state revenues or expenditures.

The bill takes effect July 1, 2022.

II. Present Situation:

The Individuals with Disabilities Education Act (IDEA)[1] was enacted to ensure that all children with a disability have available to them a free appropriate public education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and ensuring that the rights of children with disabilities and parents of such children are protected.[2] Accordingly, Florida law specifies conditions regarding the use of restraint and seclusion on students with a disability.

School District Responsibilities

School districts are required to have policies and procedures governing the use of restraint on students with disabilities, including the designation of school personnel authorized to use positive behavioral interventions and supports and restraint.

[1] 20 U.S.C. s. 1400 et seq.

[2] U.S. Department of Education, *IDEA Purpose,* https://sites.ed.gov/idea/about-idea (last visited Jan. 27, 2022).

Prohibitions on the use of Restraint

Authorized school personnel may only use mechanical or physical restraint after all positive behavioral interventions and supports have been exhausted and only when there is an imminent risk of serious injury. The use of restraint must end once the imminent risk of serious injury has ended.

School personnel are prohibited from using certain methods of restraint. Specifically, personnel may never use:

- Restraint to inflict pain to induce compliance.
- Restraint for student discipline.
- Mechanical or physical restraint techniques or devices such as straightjackets, zip ties, handcuffs, or tie downs in a manner that may obstruct or restrict breathing or blood flow or that place a student in a face down position with the student's hands restrained behind the student's back.

Reporting of Incidents of Restraint

Florida law requires a school to prepare an incident report within 24 hours after a student is released from restraint or seclusion. The incident report must contain:

- The name, age, grade, ethnicity, and disability of the student restrained or secluded.
- The date and time of the event and the duration of the restraint or seclusion.
- A description of the type of restraint.
- A description of the incident. [3]

During August through December of the 2021-2022 school year, school districts reported 2,579 incidents of restraint on 1,853 students. Approximately three to five percent of the incidents involved mechanical restraint.[4]

Safe-School Officers

For the protection and safety of school personnel, property, students, and visitors, each district school board and school district superintendent is required to partner with law enforcement agencies or security agencies to establish or assign one or more safe-school officers options at each school facility within the district, including charter schools. These options include:

- Establishing a School Resource Officer (SRO) program through a cooperative agreement with law enforcement agencies. SROs are certified law enforcement officers who must meet specified screening requirements and also complete mental health crisis intervention training.
- Commissioning one or more school safety officers. School safety officers are certified law enforcement officers with the power of arrest on district school property, who are employed by either a law enforcement agency or by the district school board. School safety officers must undergo the same screening requirements and crisis intervention training as an SRO.
- Participating in the Coach Aaron Feis Guardian Program.

[3] Section 1003.573, F.S.
[4] Florida Department of Education, *Program Accountability, Assessment & Data Systems*, https://www.fldoe.org/academics/exceptional-student-edu/data/ (last visited Feb. 3, 2022). (Tabulate the data in the pdf files in the section on SWD Restraint Data – SY 2021-22.)

- Contracting with a security agency to employ as a school security guard an individual who holds a Class "D" and Class "G" license and completes the same training and evaluation requirements as a school guardian.

Employing a school guardian is an option for district school boards to meet the safe-school officer requirements in law.[5] Persons certified as school guardians have no authority to act in any law enforcement capacity except to the extent necessary to prevent or abate an active assailant incident.[6]

III. Effect of Proposed Changes:

SB 390 prohibits the use of mechanical restraint on students with disabilities by school personnel except for school resource officers, school safety officers, school guardians, or school security guards, who may use mechanical restraint in the exercise of their duties to restrain students in grades 6 through 12.

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.

[5] Section 1006.12, F.S.
[6] Section 30.15(1)(k), F.S.

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 1003.573 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 Book

32-00444-22 2022390__

A bill to be entitled

An act relating to restraint of students with disabilities in public schools; amending s. 1003.573, F.S.; prohibiting school personnel from using mechanical restraint on students with disabilities; providing exceptions; 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. Subsection (3) of section 1003.573, Florida Statutes, is amended to read:

1003.573 Seclusion and restraint of students with disabilities in public schools.—

(3) RESTRAINT.—

(a) School personnel may not use mechanical restraint. This paragraph does not apply to school resource officers, school safety officers, school guardians, or school security guards as described in s. 1006.12, who may use mechanical restraint in the exercise of their powers and duties to restrict students in grades 6 through 12.

(b) Authorized school personnel may use physical restraint only when all positive behavior interventions and supports have been exhausted. Physical restraint may be used only when there is an imminent risk of serious injury and must ~~shall~~ be discontinued as soon as the threat posed by the dangerous behavior has dissipated. ~~Techniques or devices such as straightjackets, zip ties, handcuffs, or tie downs may not be used in ways that may obstruct or restrict breathing or blood flow or that place a student in a facedown position with the student's hands restrained behind the student's back.~~ Physical restraint techniques may not be used to inflict pain to induce compliance.

(c) ~~(b)~~ Notwithstanding the authority provided in s. 1003.32, physical restraint may ~~shall~~ be used only to protect the safety of students, school personnel, or others and may not be used for student discipline or to correct student noncompliance.

(d) ~~(c)~~ The degree of force applied during physical restraint must be only that degree of force necessary to protect the student or others from imminent risk of serious injury.

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

2/28/2022
Meeting Date

390
Bill Number or Topic

Approps
Committee

Amendment Barcode (if applicable)

Name Oliva Babis

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Address 2473 Care Dr. 200
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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: Disability Rights 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)

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 Appropriations

BILL:	PCS/CS/SB 398 (353234)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism and Economic Development); Transportation Committee; and Senator Hooper
SUBJECT:	Transportation Projects
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	**Fav/CS**
2.	McAuliffe/Price	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	McAuliffe	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 398 revises the current requirement for an annual minimum commitment by the Florida Department of Transportation (FDOT) of at least 15 percent of revenues deposited into State Transportation Trust Fund (STTF) for specified public transportation projects, by imposing a maximum commitment of no more than 25 percent of such revenues, excluding state revenues used for matching federal grants, unless otherwise specified in the General Appropriations Act.

The bill also clarifies the FDOT's authority to engage in "progressive" design-build contracting as an innovative technique of highway and bridge design and construction, exempts certain progressive design-build contracts from an existing cap on innovative contracts, and removes a limitation on design-build contracting to certain types of projects.

The bill clarifies that stipends paid by the FDOT to non-selected design-build firms that have submitted responsive proposals for construction contracts contained in the FDOT's legislatively approved work program are not subject to existing documentation and notification requirements for stipend payments made by the FDOT to resolve a bid protest through a settlement.

Additionally, the bill revises authorization for an applying contractor who desires to bid exclusively on construction contracts with proposed budget estimates of $2 million (rather than $1 million) to submit reviewed (rather than audited, certified) annual or reviewed interim

financial statements prepared by a certified public accountant. The bill also authorizes an applicant for an FDOT contractor certificate of qualification to submit with a timely submitted application a request to keep an existing certificate, with the current maximum capacity rating, in place until the expiration date.

Further, the bill repeals a current provision of law providing temporary confidential and exempt status from public records requirements for a document that reveals the identity of a person who has requested or obtained a bid package, plan, or specifications pertaining to any project to be let by the FDOT.

The fiscal impact of the bill is indeterminate. Please see the "Fiscal Impact Statement" for details.

The bill takes effect July 1, 2022.

II. Present Situation:

For ease of organization and readability, the present situation is discussed below in conjunction with the effect of the proposed changes.

III. Effect of Proposed Changes:

Public Transportation Funding from the State Transportation Trust Fund (Section 1)

Present Situation

Section 206.46(1), F.S., creates the STTF, and all moneys in the trust fund must be used for transportation purposes, as provided by law, under the direction of the FDOT. The FDOT is required to annually commit from the STTF a minimum of 15 percent of all state revenues deposited into the trust fund for public transportation projects in accordance with ch 311, F.S. (relating to seaport programs and facilities), ss. 332.003-332.007, F.S. (relating to airports), ch. 341, F.S. (relating to public transit), and ch. 343, F.S. (relating to regional transportation).

Projects eligible for funding under ch. 311, F.S., include, for example, transportation facilities (*e.g.,* roads) within the jurisdiction of a port, under the Florida Seaport Transportation and Economic Development Program.[1] Sections 332.003-332.007, F.S., make up the Florida Airport Development and Assistance Act, which provides funding for projects at public airports such as

[1] While bus service to and from a port could qualify as an eligible project, a variety of other projects are also eligible, such as dredging or deepening of channels, turning basins, or harbors; acquisition of land to be used for port purposes; and construction of wharves, docks, and cruise terminals. *See* s. 311.07(3)(b), F.S., for a full list of projects eligible for grant funding under the Florida Seaport Transportation and Economic Development Program.

airport master planning,[2] airport development,[3] and airport discretionary capacity improvements.[4]

Chapter 341, F.S., relating to "public transit" (the transporting of people by conveyances, or a system of conveyances, traveling on land or water, local or regional in nature, and available for use by the public, including paratransit)[5] could include projects such as a public transit capital project,[6] a commuter assistance project,[7] a transit corridor project,[8] or an intercity bus service project.[9]

Chapter 343, F.S., relating to regional transportation, establishes the South Florida Regional Transportation Authority, the Central Florida Regional Transportation Authority, and the Tampa Bay Regional Transit Authority. As an example of currently authorized uses of public transportation funding in the context of regional transportation, s. 343.58(4), F.S., requires specified amounts to be transferred from the STTF to the South Florida Regional Transportation Authority, which operates Tri-Rail, a passenger rail service in Broward, Palm Beach, and Miami-Dade Counties. As another example, s. 341.303, F.S., authorizes specified funding from the STTF for SunRail, a passenger rail system currently operating in Volusia, Seminole, Orange, and Osceola counties.

Various projects under these programs may be eligible for use of state revenues in the STTF to match available federal funds.

The 15-percent public transportation requirement does not apply to certain STTF revenues. Current law contains a number of provisions exempting certain revenue from the 15-percent public transportation requirement, such as those from rental car surcharges under s. 212.0606, F.S.; from initial registration fees under s. 320.072, F.S.; and from local option fuel taxes under s. 215.211, F.S. The FDOT advises that while state revenues in Fiscal Year 2022-

[2] Defined to mean "the development, for planning purposes, of information and guidance to determine the extent, type, and nature of development needed at a specific airport." Section 332.004(3), F.S.
[3] Meaning "any activity associated with the design, construction, purchase, improvements, or repair of a public-use airport or portion thereof…" Section 332.004(4), F.S.
[4] Defined as "capacity improvements which are consistent, to the maximum extent feasible, with the approved local government comprehensive plans of the units of local government in which the airport is located and which enhance intercontinental capacity at [specified] airports…" Section 332.004(5), F.S.
[5] Section 341.031(6), F.S.
[6] Defined to mean "a project undertaken by a public agency to provide public transit to its constituency, and is limited to acquisition, design, construction, reconstruction, or improvement of a governmentally owned or operated transit system." Section 341.031(7), F.S.
[7] Meaning "financial and technical assistance by the department to promote alternatives to the use of automobiles by a single commuter." The term includes ridesharing, transportation demand management, and transportation management association projects. *See* s. 341.031(9), F.S.
[8] Defined to mean "a project that is undertaken by a public agency and designed to relieve congestion and improve capacity within an identified transportation corridor by increasing people-carrying capacity of the system through the use and facilitated movement of high-occupancy conveyances." *See* s. 341.031(10), F.S., for additional definitional requirements.
[9] Defined as "regularly scheduled bus service for the general public which operates with limited stops over fixed routes connecting two or more urban areas not in close proximity…" *See* s. 341.031(11), F.S., for additional definitional requirements.

2023 are projected at over $4.7 billion, more than $1.4 billion (30 percent) of that revenue is exempt.[10]

In addition, while some revenue streams are exempt from the 15-percent requirement, a requirement for use of a given revenue stream for public transportation may still be present. For example, s. 201.15, F.S., requires 10 percent of documentary tax proceeds deposited into the STTF to be used for the New Starts Program and s. 339.0801, F.S., requires $10 million annually from tag and title fees to be used for the Seaport Investment Program.

According to FDOT, "[i]t is important to note that some of the state funds allocated for public transportation are allocated to comply with the 15% requirement specified in s. 206.46(3), F.S., while other state funds are allocated to comply with statutory use requirements for documentary stamp taxes, tag and title fees, and initial registration fees."[11]

The FDOT reports public transportation programming as of July 1, 2021 (in millions) as follows:[12]

State Funds Programmed for Public Transportation

FY	Total Public Transportation	Part of the 15-Percent Requirement	Percent Programmed Subject to the 15-Percent Requirement
2016-2017	$648.0	$487.6	16.8
2017-2018	$783.6	$530.3	17.7
2018-2019	$878.9	$598.8	20.0
2019-2020	$844.0	$568.8	19.4
2020-2021	$852.0	$545.0	18.4
2021-2022	$1,060.2	$568.0	18.0
2022-2023	$893.7	$619.6	18.9
2023-2024	$862.9	$568.9	16.8
2024-2025	$770.8	$551.9	15.9
2025-2026	$877.1	$587.3	16.6

Effect of Proposed Changes

Section 1 of the bill amends s. 206.46(3), F.S., to provide a cap on the amount of state revenues deposited into the STTF that can be used for public transportation projects of 25 percent. Unless otherwise specified in the General Appropriations Act, the FDOT must commit at least 15 percent, but no more than 25 percent, of state revenues for such projects. The calculation for

[10] *See* FDOT, *2022 Agency Legislative Bill Analysis: SB 398*, p. 3 (on file in the Senate Transportation Committee).
[11] FDOT, *2022 Agency Legislative Bill Analysis: SB 398*, p. 3
[12] *Id.*

purposes of determining the allowable funding range for the specified projects would not include the amount of state revenues used for federal grant matching.

Design-Build, Progressive Design-Build, and Innovative Contracting (Sections 2 and 3)

Present Situation

The FDOT is generally authorized to enter into construction and maintenance contracts and must ensure that all project descriptions, including design plans, "are complete, accurate, and up to date prior to the advertisement for bids on such projects."[13]

Current law also authorizes the FDOT, if it determines that doing so is in the public interest, to combine the design and construction phases of a building, a major bridge, a limited access facility, or a rail corridor project into a single contract, referred to as a "design-build" contract.[14]

The FDOT is also authorized to establish a program for transportation projects that demonstrate innovative techniques of highway and bridge design, construction, maintenance, and finance. The innovations must intend to measure resiliency and structural integrity and control time and cost increases on construction projects. These techniques may include state-of-the-art technology for pavement, safety, and other aspects of highway and bridge design, construction, and maintenance; innovative bidding and financing techniques; accelerated construction procedures; and techniques that have the potential to reduce project life cycle costs.[15]

To the maximum extent practical, the FDOT must use existing processes to award and administer construction and maintenance contracts. If the FDOT intends to use specific innovative techniques, it must document the need for any exceptions to current law that would otherwise prohibit use of the techniques.

The FDOT is limited to $120 million annually for the purposes of contracting for innovative transportation projects. However, the annual cap currently does not apply to:

- Turnpike Enterprise projects, and
- Low-bid design-build milling and resurfacing contracts.[16]

According to the Design-Build Institute of America (DBIA), design-build projects enable the project owner to manage only one contract, with the designer and contractor working together from the beginning and providing consensus project recommendations to fit the owner's schedule and budget. The entire team addresses any necessary changes, which leads "to collaborative problem-solving and innovation...." This method of project delivery, the DBIA asserts, creates an inherent "culture of collaboration."[17] As described by the DBIA, the "progressive" type of design-build contract "uses a qualifications-based or best value selection,

[13] Section 337.11(1) and (2), F.S.
[14] Section 337.11(7)(a), F.S.
[15] Section 337.025(1), F.S.
[16] Section 337.025(2), F.S.
[17] *See* DBIA, *What is Design-Build*, available at https://dbia.org/what-is-design-build/ (last visited December 15, 2021).

followed by a process whereby the owner then 'progresses' towards a design and contract price with the team (thus the term 'Progressive')."[18]

The Florida Transportation Builders' Association (FTBA) advises that traditional design-build contracting has produced nearly two decades of successful projects and that progressive design-build contracting represents an evolution from traditional design-build, allowing better allocation and management of unforeseen conditions and risks[19] encountered during the design of the project. Once the design-build firm is selected based on qualifications, including past performance, the firm then works collaboratively with the FDOT to "progress or advance" the design until the design contains sufficient detail to competitively bid the work.[20] As opposed to the FDOT's general contracting authority, under which design plans must be complete, accurate, and up to date prior to advertising for bids, pricing in a progressive design-build contract is delayed until design is closer to completion.

The FTBA further advises that progressive design-build contracting is already being used by the Greater Orlando Aviation Authority and the Tampa International Airport Authority.[21] According to the DBIA, at least two other states are currently authorized to engage in some form of progressive design-build contracting.[22]

Based on a review of the FDOT's Work Program Instructions for development of the Tentative Work Program for Fiscal Years 2022-2023 – 2026-2027, the FDOT, if not already in use under its existing design-build authority, appears to be contemplating the use of "progressive" design-build contracts under its authorization to undertake transportation projects that demonstrate innovative techniques of highway and bridge design, construction, maintenance, and finance.[23] Such contracting under current law would be subject to the $120 million statutory cap.

Effect of Proposed Changes

Section 2 of the bill amends s. 337.025, F.S., relating to the FDOT's authority to undertake innovative transportation projects, to expressly authorize the FDOT to use progressive design-build contacts for such projects.

The bill authorizes the FDOT, if it determines that doing so is in the best interests of the public, to combine the design and construction phases of a project into a single contract and select the design-build firm in the early stages of a project to ensure that the firm is part of the collaboration and development of the design as part of a step-by-step progression through construction. The bill refers to such a contract as a progressive design-build contract.

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[18] *See* DBIA, *Progressive Design-Build, Design-Build Procured with a Progressive Design and Price*, at p. 3, available at https://dbia.org/wp-content/uploads/2018/05/Primer-Progressive-Design-Build.pdf (last visited December 15, 2021).
[19] *E.g.*, variable and unsuitable soils beneath a roadway or bridge foundations, utility relocation issues, and other unforeseen conditions.
[20] *See* FTBA email to Transportation Committee staff, November 30, 2021 (on file in the Senate Transportation Committee).
[21] *Id.*
[22] *See* DBIA, *2021 State Statute Report*, available at https://dbia.org/wp-content/uploads/2021/01/2021-DBIA-State-Statute-Report.pdf (last visited December 15, 2021).
[23] *See* FDOT, *Work Program Instructions, FY 22/23-26/27*, September 10, 2021, available at https://fdotewp1.dot.state.fl.us/fmsupportapps/Documents/development/WorkProgramInstructions.pdf (last visited December 15, 2021).

The bill requires the selection and award processes for a progressive design-build contract to involve a two-phase process. In the first phase, the FDOT must competitively award the contract to a design-build firm based upon the firm's qualifications. In phase two, the selected firm must competitively bid construction trade subcontractor packages and, based upon these bids, negotiate with the FDOT for a fixed price or a guaranteed maximum price that meets the project budget and scope as advertised in the request for qualifications.

In addition, the bill exempts progressive design-build contracts for complex, high-risk projects with a minimum contract value of $400 million from the annual $120 million cap on innovative contracting.

Section 3 of the bill amends s. 337.11(7), F.S., relating to the FDOT's authority to engage in design-build contracting, to allow the FDOT to combine the design and construction phases of any project into a single contract, not just for a building, a major bridge, a limited access facility, or a rail corridor project.

Though the bill repeals the exemption for low-bid design-build milling and resurfacing contracts from the $120 million cap on innovative transportation project, by removing the limitation on design-build contracting to the design and construction phases of a building, a major bridge, a limited access facility, or a rail corridor project, "traditional" low-bid design-build milling and resurfacing contracts would not be subject to the cap. The FDOT would be authorized to use "traditional" design-build contracting for any type of project. These "traditional" (or non-innovative) contracts would not be included in the $120 million annual cap on innovative contracting, as is the case under current law for certain projects as discussed above.

Under the bill, the FDOT would be authorized to use progressive design-build contracting as an innovative contracting technique, subject to the $120 million annual cap. The annual cap on innovative contracting would continue to be inapplicable to Turnpike Enterprise projects and would be inapplicable to progressive design-build contracts for complex, high-risk projects with a minimum contract value of $400 million.

FDOT Contracting and Procurement Authority/Settlements and Stipends (Section 4)

Present Situation

When the FDOT determines that doing so is in the best interest of the public and intends, *through a settlement*, to pay a non-selected responsive bidder a total sum of $1 million or more, including any amount paid pursuant to s. 334.049, F.S. (patents, copyrights, trademarks, and trade secrets), s. 337.11(8), F.S. (stipends to non-selected, responsive design-build firms), or any other law, current law requires the FDOT to:[24]

- Document in a written memorandum by the FDOT secretary the specific reasons that such settlement and payment to a non-selected responsive bidder is in the best interest of the state. The written memorandum must be included and maintained in the permanent procurement files of the FDOT and must include:

[24] Section 337.1101(1), F.S.

  - A description of the property rights, patent rights, copyrights, trademarks, or the engineering design or other design work that the department will acquire or retain as a result of such settlement; and
  - The specific appropriation in the existing General Appropriations Act which the department intends to use to provide such payment.
- Provide prior written notification to the President of the Senate, the Speaker of the House of Representatives, the Senate and House of Representatives minority leaders, the chair and vice chair of the Legislative Budget Commission, and the Attorney General at least 5 business days, or as soon thereafter as practicable, before the FDOT makes the settlement agreement final. Such written notification must include the written memorandum described above.
- Provide written notification of such discussions to the same individuals at the time settlement discussions regarding any such payment have begun in earnest.

The FDOT is separately authorized, when the FDOT determines that doing so is in the best interest of the public, to pay a stipend to non-selected design-build firms that have submitted responsive proposals to the FDOT for construction contracts.[25] These projects are included in the FDOT's legislatively approved work program. The decision and amount of a stipend must be based on the FDOT's analysis of the estimated proposal development costs and the anticipated degree of engineering design during the procurement process. The FDOT retains the right to use the designs in the proposals from responsive non-selected design-build firms that accept a stipend.

A review of the FDOT's work program instructions suggests that the amount of a stipend to be paid is noted in the request for proposals for a design-build project. The FDOT enters into a stipend agreement with each firm after the proposals are "shortlisted,"[26] and each agreement states that the firm that receives the project contract award will not get the stipend. The non-selected firms then submit an invoice within two weeks after the project contract is executed and are paid the stipend amount noted in the request for proposals.[27]

While the FDOT might settle a bid protest through payment of a stipend, in contrast to any amounts paid by the FDOT that would trigger the documentation and notice requirements *for a settlement*, stipends paid by the FDOT pursuant to its separate authority are authorized payments arrived at by contract *during the procurement process*.

Effect of Proposed Changes

Section 4 of the bill amends s. 337.1101(1), F.S., to clarify that stipends paid by the FDOT to non-selected design-build firms that have submitted responsive proposals for construction contracts contained in the FDOT's legislatively approved work program are not subject to existing documentation and notification requirements for stipend payments made by the FDOT to resolve a bid protest through a settlement. If the FDOT pays a stipend to *settle* a bid protest in an amount that triggers the requirements, the FDOT must continue to comply with the documentation and notification requirements.

[25] Section 337.11(8), F.S.
[26] A "shortlist" is a list of selected candidates from which a final choice is to be made.
[27] *See* FDOT, *Work Program Instructions FY 22/23 – 26/27*, p. 370 of 847.

Contractor Certificates of Qualification (Section 5)

Present Situation

Current law requires any contractor desiring to bid on any FDOT construction contract in excess of $250,000 to first be certified by the FDOT as qualified pursuant to s. 337.14, F.S., and the FDOT's rules.[28] When applying to the FDOT, each application for certification must be accompanied by the contractor's latest annual financial statement, which must have been completed within the last 12 months. If the application or the annual financial statement shows the contractor's financial condition more than four months prior to the date on which the FDOT receives the application, the contractor must also submit an interim financial statement and an updated application.[29] Each required annual or interim financial statement must be audited and accompanied by the opinion of a certified public accountant (CPA). However, an applying contractor who desires to bid exclusively for the performance of construction contracts with proposed budget estimates of less than $1 million may submit reviewed annual or reviewed interim financial statements prepared by a CPA.[30]

The FDOT's rules include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor which are necessary to perform the specific class of work for which the contractor seeks certification. In so doing, the FDOT verifies and evaluates whether an applicant is competent and responsible and possesses the necessary financial resources to perform the requested work.[31]

Part of the latter inquiry involves whether an applicant has the financial resources sufficient to establish a maximum capacity rating (MCR), which is defined as the total aggregate dollar amount of *uncompleted* work an applicant may have under contract at any one time as a prime contractor and/or subcontractor, regardless of the work location and with whom the applicant contracted.[32] According to the FDOT's rules, the MCR is established by a formula, one element of which is the "ability factor." The FDOT's rules require an applicant's maximum capacity rating to be reduced by the total value of their current uncompleted work, producing the applicant's "current capacity," or bidding capacity. Under the rule, the current capacity must be amended immediately upon issuance of a new certificate of qualification, regardless of whether the existing certificate has expired.[33]

Currently, if an applicant for a certificate of qualification is found to possess the prescribed qualifications, the FDOT must issue the applicant a certificate, which, unless revoked by the FDOT for good cause, is valid for a period of 18 months after the date of the applicant's financial statement, or such shorter period as the FDOT prescribes. Submission of an application

[28] Rule Chapter 14-22, F.A.C.
[29] The interim statements must cover the period from the end date of the annual statement and must show the financial condition of the applying contractor no more than four months prior to the date the FDOT receives the interim statement but, upon request of the applicant, an application and accompanying annual or interim financial statement received by the FDOT within 15 days after either four-month period is considered timely.
[30] A reviewed annual or reviewed interim financial statement is less expensive than an audited, certified annual or interim financial statement.
[31] Rule 14-22.003(1), F.A.C.
[32] Rule 14.22-003(1)(d) and (2), F.A.C.
[33] Rule 14-22.006(1), F.A.C.

does not affect expiration of the certificate and, as of July 1, 2021, does not affect the ability factor of the applicant or the maximum capacity rating of the applicant.[34]

The FTBA advises the FDOT has requested revision of the current language to address overlapping certificates of qualification and any changes in the amount of new work that a firm can bid, due to a revised maximum capacity rating. As an example, the FTBA describes a potential situation in which a firm is allowed to bid on a $1 million contract under its existing certificate of qualification and then is later found nonresponsive when a new certificate is issued to the firm during the time leading up to the submission of a bid, due to a revised (lower) capacity rating.[35]

Effect of Proposed Changes

Section 5 of the bill amends s. 337.14, F.S, to increase from $1 million to $2 million the proposed budget estimate amount for triggering authorization of an applying contractor to submit reviewed annual or reviewed interim financial statements prepared by a CPA, instead of audited, certified statements. An applying contractor who desires to bid exclusively on construction contracts with proposed budget estimates of $2 million or less may submit reviewed annual or reviewed interim financial statements prepared by a CPA.

The bill also repeals the current provisions providing that submission of an application does not affect the ability factor or the maximum capacity rating of an applicant for an FDOT certificate of qualification. Instead, the bill authorizes an applicant to submit a written request to the FDOT with a timely submitted application to keep an existing certificate in place until its expiration date. If the FDOT approves the request, the applicant's current maximum capacity rating must remain in place until expiration of the current certification. In the absence of the FDOT's approval and in accordance with the FDOT's existing rules, the current capacity must be amended immediately upon issuance of a new certificate of qualification, regardless of whether the existing certificate has expired. The bill also makes a conforming change to the statute.

Public Records Exemption/Confidentiality of Identities of Bidders (Section 6)

Present Situation

Section 336.168(1) and (3), F.S., establish confidential and exempt status from public records requirements of s. 119.07(1), F.S., for:

- A document or electronic file revealing the FDOT's official cost estimate of a project until the contract for the project has been executed or until the project is no longer under active consideration; and
- The FDOT's bid analysis and monitoring system, including all system documentation, input, computer processes and programs, electronic data files, and output. This does not apply to the actual source documents, unless otherwise exempted under other provisions of law.

[34] Section 337.14(4), F.S. *See* s. 10, ch. 2021-188, Laws of Fla., which added the ability factor and MCR as things not being affected by the submission of an application.
[35] *See* FTBA email to Transportation Committee staff, November 30, 2021 (on file in the Senate Transportation Committee).

Section 337.168(2), F.S., currently provides that a document[36] revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by the department is confidential and exempt from the provisions of s. 119.07(1), F.S., for the period which begins two working days before the deadline for obtaining bid packages, plans, or specifications and ends with the letting of the bid. A document that reveals the identity before the two working days before the deadline for obtaining bid packages, plans, or specifications remains a public record.

The FDOT maintains a website that lists the identity of those who have requested or obtained bid packages for a given project.[37] The lists contain for each person a vendor identification number, an indication of the name of the entity that ordered the documents, and a shipping address and phone number for each. The lists do not appear to contain any information which would be exempt other any other provisions of law. The FDOT advises the lists are published daily, except for during the two-day confidential period defined in current law, and a comprehensive list is then published after the letting occurs.[38]

The issue appears to relate to small contractors, who use the identities of potential bidders for the purpose of submitting sub-contract bids to general contractors for their use in preparing bids for FDOT projects.[39]

Effect of Proposed Changes

Section 6 of the bill amends s. 337.168(2), F.S., to repeal the temporary public records exemption for a document revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by the FDOT. According to the FTBA, this revision provides full transparency as to the identity of potential bidders during the entire procurement process.[40]

Effective Date (Section 7)

The bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[36] The FDOT advises that many documents submitted by contractors contain both exempt and non-exempt information. Telephone conversation between FDOT staff and Senate Transportation Committee staff, November 24, 2021. In accordance with s. 119.07(1)(d), F.S., the FDOT would be required to redact any information contained in a document that reveals the identity of persons who have requested or obtained bid packages if the information is exempt under any other provision of law.

[37] *See e.g.*, FDOT, *Contractors ordering Plans and Specs by Letting Report*, available at https://fdotwp2.dot.state.fl.us/ContractProposalProcessing/CPPA and *Contractors ordering Proposals by Letting Report*, available at https://fdotwp2.dot.state.fl.us/ContractProposalProcessing/CPPA (last visited November 24, 2021). Enter "guest" for the user name and select "Sign in."

[38] *See* FDOT email to Transportation Committee staff, November 24, 2021 (on file in the Senate Transportation Committee).

[39] Telephone conversation between FDOT staff and Senate Transportation Committee staff, November 24, 2021.

[40] *See* FTBA email to Transportation Committee staff, November 30, 2021 (on file in the Senate Transportation Committee).

B. Public Records/Open Meetings Issues:

None. The bill does not expand public records exemptions.

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 fiscal impact of the revisions relating to FDOT contractor certificates of qualification is indeterminate.

Increasing the budget estimate amount for construction contracts from $1 million to $2 million for certain contractors exclusively bidding, allowing these additional contractors to submit reviewed financial statements should reduce the costs on these contractors to submit bids. A reviewed annual or reviewed interim financial statement is less expensive than an audited, certified annual or interim financial statement.

C. Government Sector Impact:

The impact on current funding levels, if any, of imposing a maximum commitment of no more than 25 percent of state revenues in the STTF for the identified public transportation projects, excluding those used for matching federal grants, as well as any effect on other projects in the work program, is dependent on funding levels selected by the FDOT within the authorized range. To the extent that funding for public transportation projects is increased above currently programmed levels within the cap, other projects in the work program may be impacted.

The fiscal impact of the revisions relating to design-build, progressive design-build, and innovative contracting is indeterminate, as the number and details of any such contracts to be undertaken by the FDOT is unknown.

The fiscal impact of the revisions relating to FDOT contractor certificates of qualification, if any, is indeterminate. The FDOT may incur expenses associated with

revising Rule Chapter 14-22 of the Florida Administrative Code relating to contractor qualification. These expenses, if rule revision is necessary, are expected to be absorbed within existing resources.

The FDOT may experience an indeterminate, but likely insignificant negative fiscal impact associated with responding to requests for documents that reveal the identity of a potential bidder on a transportation project, including, if necessary, redacting any information contained in a document which is made exempt under any other provisions of law, for a two-day period during which such a record would have been exempt under current law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The FDOT has raised concerns regarding the 25-percent public transportation funding cap imposed by the bill, relating to decreased long-term flexibility in preparing the work program.[41]

Current law requires the FDOT to adopt by rule procedures for administering design-build contracts and specifies what must be minimally included in the procedures.[42] As drafted, the bill is unclear as to whether the procedures adopted to administer design-build contracts also apply to progressive-design build contracts. Failure to adopt by rule any procedures applicable to progressive design-build contracts could result in a challenge under the Administrative Procedures Act.[43] An amendment to existing s. 377.11(7)((b), F.S., to expressly include progressive design-build contracts in the rulemaking requirement may be in order.

The FDOT has also expressed concerns regarding the repeal of the temporary public records exemption for the identity of persons who have requested bid packages, relating to a potential negative impact on the procurement process.[44]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 206.46, 337.025, 337.11, 337.1101, 337.14, and 337.168.

[41] FDOT, *2022 Agency Legislative Bill Analysis: SB 398*, pp. 8-9.
[42] Section 337.11(7)(b), F.S.
[43] *See* s. 120.56(4), F.S.
[44] FDOT, *2022 Agency Legislative Bill Analysis: SB 398*, p. 6.

IX. Additional Information:

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

PCS (353234) by Appropriations Committee (Recommended by Subcommittee on Transportation, Tourism and Economic Development):
The proposed committee substitute:

- Increases the minimum contract value of certain progressive design-build contracts that are exempt from the annual cap on innovative transportation projects, from $250 million contract value to a $400 contract value.
- Moves the amendatory provisions allowing the FDOT to enter into progressive design-build contracts from s. 377.11, F.S., to being amended into s. 337.025, F.S.
- Clarifies that stipends paid by the FDOT to non-selected design-build firms that have submitted responsive proposals for construction contracts contained in the FDOT's legislatively-approved work program are not subject to existing documentation and notification requirements for stipend payments made by the FDOT to resolve a bid protest through a settlement.
- Increases from $1 million to $2 million the proposed budget estimate amount for triggering authorization of an applying contractor to submit reviewed annual or reviewed interim financial statements prepared by a CPA, instead of audited, certified statements.

CS by Transportation on December 1, 2021:
The committee substitute:

- Modifies the minimum 15-percent and maximum 25-percent commitment of state revenues in the STTF for the specified public transportation projects if otherwise provided in the General Appropriations Act.
- Includes progressive design-build contracting as an authorized innovative technique of highway and bridge design and construction projects, excludes certain progressive design-build contracts from an annual $120 million cap on innovative transportation projects, and removes inapplicability of the cap to low-bid design-build milling and resurfacing contracts.
- Removes a limitation on the FDOT's authority to combine the design and construction phases (a "design-build" project) to a building, a major bridge, a limited access facility, or a rail corridor project, authorizing the FDOT to combine the design and construction phases of any type of project into a single design-build contract.
- Authorizes the FDOT, if it determines that doing so is in the best interests of the public, to use progressive design-build contracting, using a specified two-phase process, the first involving the design-build firm's qualifications and, the second involving negotiations on price.
- Removes the maximum capacity rating of an applicant for a contractor certificate of qualification as factors that do not affect the expiration of a certificate, authorizes an applicant to submit a request to keep an existing certificate of qualification in place until the expiration date and, if approved by the FDOT, keep the current maximum capacity rating of the applicant in place until expiration of the current certificate of qualification.

- Removes the entire subsection of current law containing the temporary public records exemption for a document revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by the FDOT, instead of leaving unnecessary language deeming such a document to be a public record.
- Removes from the bill authorization of the FDOT to use moneys in the STTF to pay for work zone speed enforcement by entering into an agreement with the FHP.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/28/2022	.	
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The Committee on Appropriations (Hooper) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 334.066, Florida Statutes, is created to read:

334.066 Implementing Solutions from Transportation Research and Evaluating Emerging Technologies Living Lab.—

(1) The Implementing Solutions from Transportation Research and Evaluating Emerging Technologies Living Lab (I-STREET) is

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established within the University of Florida.

(2) At a minimum, I-STREET shall:

(a) Conduct and facilitate research on issues related to innovative transportation mobility and safety technology development and deployment in this state and serve as an information exchange and depository for the most current information pertaining to transportation research, education, workforce development, and related issues.

(b) Be a continuing resource for the Legislature, the department, local governments, the nation's metropolitan regions, and the private sector in the area of transportation and related research.

(c) Promote intercampus transportation and related research activities among Florida universities to enhance the ability of these universities to attract federal and private sector funding for transportation and related research.

(d) Provide by July 1, 2023, and each July 1 thereafter, to the Governor, the President of the Senate, and the Speaker of the House of Representatives a comprehensive report that outlines its clearly defined goals and its efforts and progress on reaching those goals.

(3) An advisory board shall be created to periodically review and advise I-STREET concerning its research program. The board shall consist of nine members with expertise in transportation-related areas, as follows:

(a) A member appointed by the President of the Senate.

(b) A member appointed by the Speaker of the House of Representatives.

(c) The Secretary of Transportation or his or her designee.

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(d) The Secretary of Economic Opportunity or his or her designee.

(e) A member of the Florida Transportation Commission.

(f) Four members nominated by the University of Florida's College of Engineering and approved by the university's president. The College of Engineering's nominees may include representatives of the University of Florida, other academic and research institutions, or private entities.

Section 2. Section 337.025, Florida Statutes, is amended to read:

337.025 Innovative transportation projects; department to establish program.—

(1) The department may establish a program for transportation projects demonstrating innovative techniques of highway and bridge design, construction, maintenance, and finance which have the intended effect of measuring resiliency and structural integrity and controlling time and cost increases on construction projects. Such techniques may include, but are not limited to, state-of-the-art technology for pavement, safety, and other aspects of highway and bridge design, construction, and maintenance; innovative bidding and financing techniques; progressive design-build contracts as specified in subsection (2); accelerated construction procedures; and those techniques that have the potential to reduce project life cycle costs. To the maximum extent practical, the department must use the existing process to award and administer construction and maintenance contracts. When specific innovative techniques are to be used, the department is not required to adhere to those provisions of law that would prevent, preclude, or in any way

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prohibit the department from using the innovative technique. However, before using an innovative technique that is inconsistent with another provision of law, the department must document in writing the need for the exception and identify what benefits the traveling public and the affected community are anticipated to receive. The department may enter into no more than $120 million in contracts awarded annually for the purposes authorized by this section.

(2) If the department determines that it is in the best interests of the public, the department may combine the design and construction phases of a project into a single contract and select the design-build firm in the early stages of a project to ensure that the design-build firm is part of the collaboration and development of the design as part of a step-by-step progression through construction. Such contract is referred to as a progressive design-build contract. For progressive design-build contracts, the selection and award processes must include a two-phase process. For phase one, the department shall competitively award the contract to a design-build firm based upon qualifications. For phase two, the design-build firm shall competitively bid construction trade subcontractor packages and, based upon these bids, negotiate with the department a fixed firm price or guaranteed maximum price that meets the project budget and scope as advertised in the request for qualifications.

(3) The annual cap on contracts provided in subsection (1) does not apply to:

(a) Turnpike enterprise projects.

(b) Progressive design-build contracts for complex, high-

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risk projects with a minimum contract value of $400 million ~~Low-bid design-build milling and resurfacing contracts~~.

Section 3. Section 337.107, Florida Statutes, is amended to read:

337.107 Contracts for right-of-way services.—

(1) The department may enter into contracts pursuant to s. 287.055 for right-of-way services on transportation corridors and transportation facilities. Right-of-way services include negotiation and acquisition services, appraisal services, demolition and removal of improvements, and asbestos-abatement services.

(2) For a construction project funded in the first 3 years of the department's adopted work program, a landowner with land contiguous to a limited access facility may be allowed, under a department-issued permit, to remove vegetation designated to be removed as part of the construction project on a department right-of-way in an area associated with a limited access facility, within the same limits of removal as identified in the final plans of the project.

Section 4. Present subsections (15) and (16) of section 337.11, Florida Statutes, are redesignated as subsections (16) and (17), a new subsection (15) is added to that section, and paragraphs (a) and (b) of subsection (7) of that section are amended, to read:

337.11 Contracting authority of department; bids; emergency repairs, supplemental agreements, and change orders; combined design and construction contracts; progress payments; records; requirements of vehicle registration.—

(7)(a) If the department determines that it is in the best



interests of the public, the department may combine the design and construction phases of a ~~building, a major bridge, a limited access facility, or a rail corridor~~ project into a single contract. Such contract is referred to as a design-build contract. Design-build contracts may be advertised and awarded notwithstanding the requirements of paragraph (3)(c). However, construction activities may not begin on any portion of such projects for which the department has not yet obtained title to the necessary rights-of-way and easements for the construction of that portion of the project has vested in the state or a local governmental entity and all railroad crossing and utility agreements have been executed. Title to rights-of-way shall be deemed to have vested in the state when the title has been dedicated to the public or acquired by prescription.

(b) The department shall adopt by rule procedures for administering design-build contracts, including progressive design-build contracts. Such procedures shall include, but not be limited to:

1. Prequalification requirements.

2. Public announcement procedures.

3. Scope of service requirements.

4. Letters of interest requirements.

5. Short-listing criteria and procedures.

6. Bid proposal requirements.

7. Technical review committee.

8. Selection and award processes.

9. Stipend requirements.

(15) Each contract let by the department for performance of bridge construction or maintenance over navigable waters must


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contain a provision requiring marine general liability insurance, in an amount to be determined by the department, which covers third-party personal injury and property damage caused by vessels used by the contractor in the performance of the work.

Section 5. Subsection (1) of section 337.1101, Florida Statutes, is amended to read:

337.1101 Contracting and procurement authority of the department; settlements; notification required.—

(1) When the department, or any entity or enterprise within the department, determines that it is in the best interest of the public to resolve a protest filed in accordance with s. 120.57(3) of the award of a contract being procured pursuant to s. 337.11 or related to the purchase of personal property or contractual services being procured pursuant to s. 287.057, through a settlement that requires the department to pay a nonselected responsive bidder a total sum of $1 million or more, including any amount paid pursuant to s. 334.049, any amount paid pursuant to s. 337.11(8) which is not included in the department's work program approved by the Legislature as part of the General Appropriations Act, or any amount paid pursuant to any other law, the department must:

(a) Document in a written memorandum by the secretary the specific reasons that such settlement and payment to a nonselected responsive bidder is in the best interest of the state. The written memorandum must be included and maintained in the department's permanent files concerning the procurement and must include:

1. A description of the property rights, patent rights,



copyrights, trademarks, or the engineering design or other design work that the department will acquire or retain as a result of such settlement; and

2. The specific appropriation in the existing General Appropriations Act which the department intends to use to provide such payment.

(b) Provide prior written notification to the President of the Senate, the Speaker of the House of Representatives, the Senate and House of Representatives minority leaders, the chair and vice chair of the Legislative Budget Commission, and the Attorney General at least 5 business days, or as soon thereafter as practicable, before the department makes the settlement agreement final. Such written notification must include the written memorandum required pursuant to paragraph (a).

(c) Provide, at the time settlement discussions regarding any such payment have begun in earnest, written notification of such discussions to the President of the Senate, the Speaker of the House of Representatives, the Senate and House of Representatives minority leaders, the chair and vice chair of the Legislative Budget Commission, and the Attorney General.

Section 6. Subsections (1), (4), and (7) of section 337.14, Florida Statutes, are amended to read:

337.14 Application for qualification; certificate of qualification; restrictions; request for hearing.—

(1) Any contractor desiring to bid for the performance of any construction contract in excess of $250,000 which the department proposes to let must first be certified by the department as qualified pursuant to this section and rules of the department. The rules of the department must address the



qualification of contractors to bid on construction contracts in excess of $250,000 and must include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor which are necessary to perform the specific class of work for which the contractor seeks certification. Any contractor who desires to bid on contracts in excess of $50 million and who is not qualified and in good standing with the department as of January 1, 2019, must first be certified by the department as qualified and must have satisfactorily completed two projects, each in excess of $15 million, for the department or for any other state department of transportation. The department may limit the dollar amount of any contract upon which a contractor is qualified to bid or the aggregate total dollar volume of contracts such contractor is allowed to have under contract at any one time. Each applying contractor seeking qualification to bid on construction contracts in excess of $250,000 shall furnish the department a statement under oath, on such forms as the department may prescribe, setting forth detailed information as required on the application. Each application for certification must be accompanied by audited, certified financial statements prepared in accordance with generally accepted accounting principles and auditing standards by a certified public accountant licensed in this state or another state. The audited, certified financial statements must be for the applying contractor and must have been prepared within the immediately preceding 12 months. The department may not consider any financial information of the parent entity of the applying contractor, if any. The department may not certify as qualified

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any applying contractor who fails to submit the audited, certified financial statements required by this subsection. If the application or the annual financial statement shows the financial condition of the applying contractor more than 4 months before the date on which the application is received by the department, the applicant must also submit interim audited, certified financial statements prepared in accordance with generally accepted accounting principles and auditing standards by a certified public accountant licensed in this state or another state. The interim financial statements must cover the period from the end date of the annual statement and must show the financial condition of the applying contractor no more than 4 months before the date that the interim financial statements are received by the department. However, upon the request of the applying contractor, an application and accompanying annual or interim financial statement received by the department within 15 days after either 4-month period under this subsection shall be considered timely. An applying contractor desiring to bid exclusively for the performance of construction contracts with proposed budget estimates of less than $2 ~~$1~~ million may submit reviewed annual or reviewed interim financial statements prepared by a certified public accountant. The information required by this subsection is confidential and exempt from s. 119.07(1). The department shall act upon the application for qualification within 30 days after the department determines that the application is complete. The department may waive the requirements of this subsection for projects having a contract price of $500,000 or less if the department determines that the project is of a noncritical nature and the waiver will not

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endanger public health, safety, or property.

(4) If the applicant is found to possess the prescribed qualifications, the department shall issue to him or her a certificate of qualification that, unless thereafter revoked by the department for good cause, will be valid for a period of 18 months after the date of the applicant's financial statement or such shorter period as the department prescribes. Submission of an application does ~~and subsequent approval do~~ not affect expiration of the certificate of qualification~~, the ability factor of the applicant, or the maximum capacity rating of the applicant~~. An applicant may submit a written request with a timely submitted application to keep an existing certificate of qualification in place until the expiration date. If the request is approved by the department, the current maximum capacity rating of the applicant must remain in place until expiration of the current certificate of qualification. If the department finds that an application is incomplete or contains inadequate information or information that cannot be verified, the department may request in writing that the applicant provide the necessary information to complete the application or provide the source from which any information in the application may be verified. If the applicant fails to comply with the initial written request within a reasonable period of time as specified therein, the department shall request the information a second time. If the applicant fails to comply with the second request within a reasonable period of time as specified therein, the application shall be denied.

(7) A "contractor" as defined in s. 337.165(1)(d) or his or her "affiliate" as defined in s. 337.165(1)(a) qualified with

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the department under this section may not also qualify under s. 287.055 or s. 337.105 to provide testing services, construction, engineering, and inspection services to the department. This limitation does not apply to any design-build, including progressive design-build, prequalification under s. 337.11(7) and does not apply when the department otherwise determines by written order entered at least 30 days before advertisement that the limitation is not in the best interests of the public with respect to a particular contract for testing services, construction, engineering, and inspection services. This subsection does not authorize a contractor to provide testing services, or provide construction, engineering, and inspection services, to the department in connection with a construction contract under which the contractor is performing any work. Notwithstanding any other provision of law to the contrary, for a project that is wholly or partially funded by the department and administered by a local governmental entity, except for a seaport listed in s. 311.09 or an airport as defined in s. 332.004, the entity performing design and construction engineering and inspection services may not be the same entity.

Section 7. Section 337.168, Florida Statutes, is amended to read:

337.168 Confidentiality of official estimates~~, identities of potential bidders,~~ and bid analysis and monitoring system.—

(1) A document or electronic file revealing the official cost estimate of the department of a project is confidential and exempt from the provisions of s. 119.07(1) until the contract for the project has been executed or until the project is no longer under active consideration.



(2) ~~A document that reveals the identity of a person who has requested or obtained a bid package, plan, or specifications pertaining to any project to be let by the department is confidential and exempt from the provisions of s. 119.07(1) for the period that begins 2 working days before the deadline for obtaining bid packages, plans, or specifications and ends with the letting of the bid. A document that reveals the identity of a person who has requested or obtained a bid package, plan, or specifications pertaining to any project to be let by the department before the 2 working days before the deadline for obtaining bid packages, plans, or specifications remains a public record subject to s. 119.07(1).~~

~~(3)~~ The bid analysis and monitoring system of the department is confidential and exempt from the provisions of s. 119.07(1). This exemption applies to all system documentation, input, computer processes and programs, electronic data files, and output, but does not apply to the actual source documents, unless otherwise exempted under other provisions of law.

Section 8. Subsection (3) of section 338.165, Florida Statutes, is amended to read:

338.165 Continuation of tolls.—

(3) Notwithstanding any other provision of law, the department, including the turnpike enterprise, shall index toll rates on existing toll facilities to the annual Consumer Price Index or similar inflation indicators. Toll rate adjustments for inflation under this subsection may be made no more frequently than once a year and must be made no less frequently than once every 10 ~~5~~ years ~~as necessary to accommodate cash toll rate schedules~~. Toll rates may be increased beyond these limits as

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directed by bond documents, covenants, or governing body authorization or pursuant to department administrative rule.

Section 9. 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 transportation; creating s. 334.066, F.S.; establishing the Implementing Solutions from Transportation Research and Evaluating Emerging Technologies Living Lab (I-STREET) within the University of Florida; specifying the duties of I-STREET; requiring I-STREET to annually provide the Governor and the Legislature with a certain report; requiring the creation of a certain advisory board; specifying the composition and duties of the board; amending s. 337.025, F.S.; providing that the Department of Transportation's program for innovative transportation projects may include progressive design-build contracts; authorizing the department to enter into a progressive design-build contract if it makes a certain determination; providing procedures and requirements for progressive design-build contracts; revising contracts exempt from a specified annual monetary cap on contracts; amending s. 337.107, F.S.; authorizing certain landowners to remove certain vegetation on department rights-of-way under specified

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circumstances; amending s. 337.11, F.S.; revising the department's authority relating to design-build contracts; requiring the department to adopt procedures for administering progressive design-build contracts; requiring that contracts let by the department for performance of bridge construction or maintenance over navigable waters contain certain insurance requirements; amending s. 337.1101, F.S.; revising the calculation of a certain settlement paid to a nonselected responsive bidder which requires the department to maintain certain records and provide certain notices to the Legislature and Attorney General; amending s. 337.14, F.S.; revising a dollar limit of proposed budget estimates of construction contracts for which an applying contractor may submit certain financial statements; revising procedures relating to certificates of qualification issued by the department to construction contractors seeking certification to bid on certain contracts; exempting progressive design-build prequalifications from a certain restriction on contractors and their affiliates; amending s. 337.168, F.S.; deleting a public records exemption for certain documents revealing the identity of a potential bidder; amending s. 338.165, F.S.; revising the interval and circumstances under which the department must adjust rates on existing toll facilities for inflation; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/28/2022	.	
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The Committee on Appropriations (Diaz) recommended the following:

Senate Amendment to Amendment (639566) (with title amendment)

Delete line 361
and insert:
Section 9. Effective upon this act becoming a law, the Greater Miami Expressway Agency created by chapter 2019-169, Laws of Florida, is reestablished subject to the revised powers and duties set forth herein.
Section 10. Effective upon this act becoming a law, section



348.0301, Florida Statutes, is amended to read:

348.0301 Short title.—This part may be cited as the "Greater Miami Expressway Agency Act of 2022."

Section 11. Effective upon this act becoming a law, section 348.0302, Florida Statutes, is repealed.

Section 12. Effective upon this act becoming a law, subsection (4) and present subsection (9) of section 348.0303, Florida Statutes, are amended, and a new subsection (11) is added to that section, to read:

348.0303 Definitions.—As used in the this part, the term:

~~(4) "County" means a county as defined in s. 125.011(1).~~

(8)~~(9)~~ "Expressway system" means any and all expressways ~~not owned by the department~~ which fall within the geographic boundaries of the agency established pursuant to this act and appurtenant facilities thereto, including but not limited to, all approaches, roads, bridges, and avenues of access for such expressway. The term includes a public transportation facility.

(11) "Miami-Dade County Expressway Authority" means the state agency previously existing and originally established under the Florida Expressway Authority Act and subsequently dissolved by the Greater Miami Expressway Agency Act.

Section 13. Effective upon this act becoming a law, section 348.03031, Florida Statutes, is created to read:

348.03031 Legislative findings, intent, and declaration.—

(1) The Legislature finds the need to clarify the legal status, ownership, and control of the roads that constitute the expressway system in Miami-Dade County and portions of northeast Monroe County, following Miami-Dade County's attempt to abolish the Greater Miami Expressway Agency in Miami-Dade Ordinance 21-


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35 (May 4, 2021).

(2) The Legislature recognizes that the original expressway system previously operated by the former Miami-Dade County Expressway Authority is owned by the department. The transfer agreement dated December 10, 1996, entered into by the department and the former Miami-Dade County Expressway Authority, transferred only operational and financial control of the expressways owned by the department.

(3) The Legislature recognizes the Miami-Dade County Expressway Authority was dissolved by chapter 2019-169, Laws of Florida, and all assets, employees, contracts, rights, and liabilities were purportedly transferred to the Greater Miami Expressway Agency. All assets, employees, contracts, rights, and liabilities previously owned or controlled by the former Miami-Dade County Expressway Authority, including, without limitation, those previously transferred to the Greater Miami Expressway Agency, are transferred back to the reestablished Greater Miami Expressway Agency created in s. 348.0304 on the effective date of this act.

(4) It is the intent of the Legislature to confirm that the Greater Miami Expressway Agency that was created by chapter 2019-169, Florida Statutes, is hereby reestablished. The Greater Miami Expressway Agency is the state agency that shall govern the expressway system within the geographical boundaries of Miami-Dade County and the portion of northeast Monroe County which includes County Road 94 and the portion of Monroe County bounded on the north and east by the borders of Monroe County and on the south and west by County Road 94. It is further the express intent of the Legislature that the Greater Miami



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Expressway Agency created by this law is an agency of the state and not subject to any county's home rule powers.

Section 14. Effective upon this act becoming a law, subsection (1) and paragraphs (a) and (b) of subsection (2) of section 348.0304, Florida Statutes, are amended to read:

348.0304 Greater Miami Expressway Agency.—

(1) There is hereby created and established a body politic and corporate, an agency of the state, to be known as the "Greater Miami Expressway Agency." The agency shall serve the area within the geographical boundaries of Miami-Dade County and the portion of northeast Monroe County including County Road 94 and the portion of Monroe County bounded on the north and east by the borders of Monroe County and on the south and west by County Road 94.

(2)(a) The governing body of the agency shall consist of nine voting members. Except for the district secretary of the department, each member must be a permanent resident of a ~~the~~ county served by the agency and may not hold, or have held in the previous 2 years, elected or appointed office in such ~~the~~ county, except this provision does not apply to any initial appointment under paragraph (b) or to any member who previously served on the governing body of the former Greater Miami Expressway Agency. Each member may only serve two terms of 4 years each, except there is no restriction on the term of the department's district secretary for the district serving Miami-Dade County. Four members shall be appointed by the Governor, one of whom must be a member of the metropolitan planning organization for Miami-Dade ~~the~~ County. Two members, who must be residents of an unincorporated portion of the geographic area



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described in subsection (1) and residing within 15 miles of an area with the highest amount of agency toll roads, shall be appointed by the board of county commissioners of Miami-Dade County ~~residing within 15 miles of an area with the highest amount of agency toll roads, shall be appointed by the board of county commissioners of the county~~. Two members, who must be residents of incorporated municipalities within a county served by the agency, shall be appointed by the metropolitan planning organization for a county served by the agency ~~the county, shall be appointed by the metropolitan planning organization for the county~~. The district secretary of the department serving in the district that contains Miami-Dade ~~the~~ County shall serve as an ex officio voting member of the governing body.

(b) Initial appointments to the governing body of the agency shall be made by July 31, 2019. For the initial appointments:

1. The Governor shall appoint one member for a term of 1 year, one member for a term of 2 years, one member for a term of 3 years, and one member for a term of 4 years.

2. The board of county commissioners of Miami-Dade County shall appoint one member for a term of 1 year and one member for a term of 3 years.

3. The metropolitan planning organization of Miami-Dade County shall appoint one member for a term of 2 years and one member for a term of 4 years.

Section 15. Effective upon this act becoming a law, paragraph (b) of subsection (1), paragraph (f) of subsection (2), and subsections (6) and (8) of section 348.0306, Florida Statutes, are amended to read:



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348.0306 Purposes and powers.—

(1)

(b) The agency, in the construction of an expressway system, may ~~shall~~ construct expressways. Construction of an expressway system may be completed in segments, phases, or stages in a manner that will permit the expansion of these segments, phases, or stages to the desired expressway configuration. The agency, in the construction of an expressway system, may construct any extensions of, additions to, or improvements to the expressway system or appurtenant facilities, including all necessary approaches, roads, bridges, and avenues of access, with such changes, modifications, or revisions of the project that are deemed desirable and proper. For new capacity projects, the agency shall use the department's design standards and, to the maximum extent practicable, design facilities such as the department would for high-speed limited access facilities. The agency may only add additional expressways to an expressway system, under the terms and conditions set forth in this act, with the prior express written consent of the board of county commissioners of Miami-Dade ~~the~~ County or Monroe County, as applicable, and only if such additional expressways lack adequate committed funding for implementation, are financially feasible, and are compatible with the existing plans, projects, and programs of the agency.

(2) The agency may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of its purposes, including, but not limited to, the following rights and powers:

(f) To borrow money, make and issue negotiable notes,



bonds, refund bonds, and other evidence of indebtedness of the agency, which bonds or other evidence of indebtedness may be issued pursuant to the State Bond Act or, in the alternative, pursuant to s. 348.0309(2) to finance or refinance additions, extensions, or improvements to the expressway system within the geographic boundaries of the agency, and to provide for the security of the bonds or other evidence of indebtedness and the rights and remedies of the holders of the bonds or other evidence of indebtedness. Any bonds or other evidence of indebtedness pledging the full faith and credit of the state may only be issued pursuant to the State Bond Act.

1. The agency shall reimburse the counties ~~county~~ in which it exists for any sums expended from any county gasoline tax funds used for payment of such obligations. Any county gasoline tax funds so disbursed shall be repaid in accordance with the terms of any lease-purchase or interlocal agreement with any county or the department together with interest, at the rate agreed to in such agreement. In no event shall any county gasoline tax funds be more than a secondary pledge of revenues for repayment of any obligations issued pursuant to this part.

2. The agency may refund any bonds previously issued, to the extent allowable by federal tax laws, to finance or refinance an expressway system located within the geographic boundaries of the agency regardless of whether the bonds being refunded were issued by such agency, an agency of the state, or a county.

(6) Notwithstanding subsection (3) or any other provision of law to the contrary, the agency may not undertake any construction that is not consistent with both the metropolitan


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planning organization's transportation improvement program and the county's comprehensive plan in an area served by the agency.

(8) The governing body of a ~~the~~ county served by the agency may enter into an interlocal agreement with the agency pursuant to s. 163.01 for the joint performance or performance by either governmental entity of any corporate function of the county or agency necessary or appropriate to enable the agency to fulfill the powers and purposes of this part and promote the efficient and effective transportation of persons and goods in such county.

Section 16. Effective upon this act becoming a law, subsections (1) and (2) of section 348.0307, Florida Statutes, are amended to read:

348.0307 Greater Miami Toll Rebate Program.—There is created by the agency the Greater Miami Toll Rebate Program.

(1) The agency shall develop and implement a monthly rebate program for the month beginning January 1, 2023 ~~2020~~, subject to:

(a) Compliance with any covenants made with the holders of the agency's bonds which are in the trust indentures or resolutions adopted in connection with the issuance of the agency's bonds;

(b) Consideration of the financial feasibility of such a program as reported by the Auditor General as required by this act; and

(c) Consideration of the impact of such a program to the financial feasibility of prioritized projects that have been allocated funds for a project development and an environmental study but are not contained in the 5-year work program on July


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1, 2019.

(2) Monthly rebates shall be credited to the account of each SunPass holder who incurs $12.50 or more in tolls on the expressway system each month and whose SunPass is registered to a motor vehicle registered to an address in the geographic area described in s. 348.0304(1) ~~county~~.

Section 17. Effective upon this act becoming a law, paragraph (c) of subsection (2) of section 348.0309, Florida Statutes, is amended to read:

348.0309 Bonds.—

(2)

(c) Such bonds shall be sold by the agency at public sale by competitive bid. However, if the agency, after receipt of a written recommendation from a financial adviser, determines by official action after public hearing by a two-thirds vote of all voting members of the agency that a negotiated sale of the bonds is in the best interest of the agency, the agency may negotiate for sale of the bonds with the underwriter or underwriters designated by the agency and the counties ~~county~~ in which the agency exists. The agency shall provide specific findings in a resolution as to the reasons requiring the negotiated sale, which resolution shall incorporate and have attached thereto the written recommendation of the financial adviser required by this subsection.

Section 18. Effective upon this act becoming a law, subsection (2) of section 348.0315, Florida Statutes, is amended to read:

348.0315 Public accountability.—

(2) Beginning October 1, 2023 ~~2020~~, and annually


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thereafter, the agency shall submit to the metropolitan planning organization for each ~~the~~ county served by the agency a report providing information regarding the amount of tolls collected and how those tolls were used in the agency's previous fiscal year. The report shall be posted on the agency's website.

Section 19. Effective upon this act becoming a law, subsection (1) of section 348.0318, Florida Statutes, is amended to read:

348.0318 This part complete and additional authority.—

(1) The powers conferred by this part are in addition and supplemental to the existing powers of the department and the governing body of the agency, and this part may not be construed as repealing any of the provisions of any other law, general, special, or local, but to supersede such other laws in the exercise of the powers provided in this part and to provide a complete method for the exercise of the powers granted in this part. The extension and improvement of the expressway system, and the issuance of bonds pursuant to this part to finance all or part of the cost of the system, may be accomplished upon compliance with the provisions of this part without regard to or necessity for compliance with the provisions, limitations, or restrictions contained in any other general, special, or local law, including, but not limited to, s. 215.821, and no approval of any bonds issued under this part by the qualified electors or qualified electors who are freeholders in the state or in Miami-Dade County, in Monroe County, or in any other political subdivision of the state, is required for the issuance of such bonds pursuant to this part, including, but not limited to, s. 215.821.



Section 20. 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 this act becomes a law.

Section 21. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2022.

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

And the title is amended as follows:

Delete line 415

and insert:

reestablishing the Greater Miami Expressway Agency; amending s. 348.0301, F.S.; revising a short title; repealing s. 348.0302, F.S., relating to applicability; amending s. 348.0303, F.S.; deleting the term "county"; revising the definition of the term "expressway system"; defining the term "Miami-Dade County Expressway Authority"; creating s. 348.03031, F.S.; providing legislative findings and intent; amending s. 348.0304, F.S.; revising the area served by the agency to include specified portions of Monroe County; revising requirements for membership of the agency's governing body; revising requirements for initial appointments; amending s. 348.0306, F.S.; authorizing, rather than requiring, the agency to construct expressways; conforming provisions to changes made by the act; amending s. 348.0307, F.S.; revising the date by which the agency must develop and


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implement a certain toll rebate program; revising persons who are eligible for the program; amending s. 348.0309, F.S.; conforming a provision to changes made by the act; amending s. 348.0315, F.S.; revising the date by which, and the entities to which, the agency must begin submitting certain annual reports relating to tolls; amending s. 348.0318, F.S.; conforming a provision to changes made by the act; providing a directive to the Division of Law Revision; providing effective dates.

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Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Transportation, Tourism, and Economic Development)

A bill to be entitled

An act relating to transportation projects; amending s. 206.46, F.S.; revising the requirement for the annual commitment of State Transportation Trust Fund revenues for public transportation projects by the Department of Transportation; amending s. 337.025, F.S.; providing that the department's program for innovative transportation projects may include progressive design-build contracts; authorizing the department to enter into a progressive design-build contract if it makes a certain determination; providing procedures and requirements for progressive design-build contracts; revising contracts exempt from a specified annual monetary cap on contracts; amending s. 337.11, F.S.; revising the department's authority relating to design-build contracts; amending s. 337.1101, F.S.; revising the calculation of a certain settlement paid to a nonselected responsive bidder which requires the department to maintain certain records and provide certain notices to the Legislature and Attorney General; amending s. 337.14, F.S.; revising a dollar limit of proposed budget estimates of construction contracts for which an applying contractor may submit certain financial statements; revising procedures relating to certificates of qualification issued by the department to construction

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contractors seeking certification to bid on certain contracts; exempting progressive design-build prequalifications from a certain restriction on contractors and their affiliates; amending s. 337.168, F.S.; deleting a public records exemption for certain documents revealing the identity of a potential bidder; providing an effective date.

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

Section 1. Subsection (3) of section 206.46, Florida Statutes, is amended to read:

206.46 State Transportation Trust Fund.—

(3) Unless otherwise specified in the General Appropriations Act, each fiscal year, at least ~~a minimum of~~ 15 percent but not more than 25 percent of all state revenues deposited into the State Transportation Trust Fund, excluding state revenues used for matching federal grants, shall be committed annually by the department for public transportation projects in accordance with chapter 311, ss. 332.003-332.007, chapter 341, and chapter 343.

Section 2. Section 337.025, Florida Statutes, is amended to read:

337.025 Innovative transportation projects; department to establish program.—

(1) The department may establish a program for transportation projects demonstrating innovative techniques of highway and bridge design, construction, maintenance, and finance which have the intended effect of measuring resiliency

and structural integrity and controlling time and cost increases on construction projects. Such techniques may include, but are not limited to, state-of-the-art technology for pavement, safety, and other aspects of highway and bridge design, construction, and maintenance; innovative bidding and financing techniques; progressive design-build contracts as specified in subsection (2); accelerated construction procedures; and those techniques that have the potential to reduce project life cycle costs. To the maximum extent practical, the department must use the existing process to award and administer construction and maintenance contracts. When specific innovative techniques are to be used, the department is not required to adhere to those provisions of law that would prevent, preclude, or in any way prohibit the department from using the innovative technique. However, before using an innovative technique that is inconsistent with another provision of law, the department must document in writing the need for the exception and identify what benefits the traveling public and the affected community are anticipated to receive. The department may enter into no more than $120 million in contracts awarded annually for the purposes authorized by this section.

(2) If the department determines that it is in the best interests of the public, the department may combine the design and construction phases of a project into a single contract and select the design-build firm in the early stages of a project to ensure that the design-build firm is part of the collaboration and development of the design as part of a step-by-step progression through construction. Such contract is referred to as a progressive design-build contract. For progressive design-

build contracts, the selection and award processes must include a two-phase process. For phase one, the department shall competitively award the contract to a design-build firm based upon qualifications. For phase two, the design-build firm shall competitively bid construction trade subcontractor packages and, based upon these bids, negotiate with the department a fixed firm price or guaranteed maximum price that meets the project budget and scope as advertised in the request for qualifications.

(3) The annual cap on contracts provided in subsection (1) does not apply to:

(a) Turnpike enterprise projects.

(b) Progressive design-build contracts for complex, high-risk projects with a minimum contract value of $400 million ~~Low-bid design-build milling and resurfacing contracts~~.

Section 3. Paragraph (a) of subsection (7) of section 337.11, Florida Statutes, is amended to read:

337.11 Contracting authority of department; bids; emergency repairs, supplemental agreements, and change orders; combined design and construction contracts; progress payments; records; requirements of vehicle registration.—

(7)(a) If the department determines that it is in the best interests of the public, the department may combine the design and construction phases of a ~~building, a major bridge, a limited access facility, or a rail corridor~~ project into a single contract. Such contract is referred to as a design-build contract. Design-build contracts may be advertised and awarded notwithstanding the requirements of paragraph (3)(c). However, construction activities may not begin on any portion of such



projects for which the department has not yet obtained title to the necessary rights-of-way and easements for the construction of that portion of the project has vested in the state or a local governmental entity and all railroad crossing and utility agreements have been executed. Title to rights-of-way shall be deemed to have vested in the state when the title has been dedicated to the public or acquired by prescription.

Section 4. Subsection (1) of section 337.1101, Florida Statutes, is amended to read:

337.1101 Contracting and procurement authority of the department; settlements; notification required.—

(1) When the department, or any entity or enterprise within the department, determines that it is in the best interest of the public to resolve a protest filed in accordance with s. 120.57(3) of the award of a contract being procured pursuant to s. 337.11 or related to the purchase of personal property or contractual services being procured pursuant to s. 287.057, through a settlement that requires the department to pay a nonselected responsive bidder a total sum of $1 million or more, including any amount paid pursuant to s. 334.049, <u>any amount paid pursuant to</u> s. 337.11(8) <u>which is not included in the department's work program approved by the Legislature as part of the General Appropriations Act</u>, or <u>any amount paid pursuant to</u> any other law, the department must:

(a) Document in a written memorandum by the secretary the specific reasons that such settlement and payment to a nonselected responsive bidder is in the best interest of the state. The written memorandum must be included and maintained in the department's permanent files concerning the procurement and



must include:

1. A description of the property rights, patent rights, copyrights, trademarks, or the engineering design or other design work that the department will acquire or retain as a result of such settlement; and

2. The specific appropriation in the existing General Appropriations Act which the department intends to use to provide such payment.

(b) Provide prior written notification to the President of the Senate, the Speaker of the House of Representatives, the Senate and House of Representatives minority leaders, the chair and vice chair of the Legislative Budget Commission, and the Attorney General at least 5 business days, or as soon thereafter as practicable, before the department makes the settlement agreement final. Such written notification must include the written memorandum required pursuant to paragraph (a).

(c) Provide, at the time settlement discussions regarding any such payment have begun in earnest, written notification of such discussions to the President of the Senate, the Speaker of the House of Representatives, the Senate and House of Representatives minority leaders, the chair and vice chair of the Legislative Budget Commission, and the Attorney General.

Section 5. Subsections (1), (4), and (7) of section 337.14, Florida Statutes, are amended to read:

337.14 Application for qualification; certificate of qualification; restrictions; request for hearing.—

(1) Any contractor desiring to bid for the performance of any construction contract in excess of $250,000 which the department proposes to let must first be certified by the

department as qualified pursuant to this section and rules of the department. The rules of the department must address the qualification of contractors to bid on construction contracts in excess of $250,000 and must include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor which are necessary to perform the specific class of work for which the contractor seeks certification. Any contractor who desires to bid on contracts in excess of $50 million and who is not qualified and in good standing with the department as of January 1, 2019, must first be certified by the department as qualified and must have satisfactorily completed two projects, each in excess of $15 million, for the department or for any other state department of transportation. The department may limit the dollar amount of any contract upon which a contractor is qualified to bid or the aggregate total dollar volume of contracts such contractor is allowed to have under contract at any one time. Each applying contractor seeking qualification to bid on construction contracts in excess of $250,000 shall furnish the department a statement under oath, on such forms as the department may prescribe, setting forth detailed information as required on the application. Each application for certification must be accompanied by audited, certified financial statements prepared in accordance with generally accepted accounting principles and auditing standards by a certified public accountant licensed in this state or another state. The audited, certified financial statements must be for the applying contractor and must have been prepared within the immediately preceding 12 months. The department may not consider

any financial information of the parent entity of the applying contractor, if any. The department may not certify as qualified any applying contractor who fails to submit the audited, certified financial statements required by this subsection. If the application or the annual financial statement shows the financial condition of the applying contractor more than 4 months before the date on which the application is received by the department, the applicant must also submit interim audited, certified financial statements prepared in accordance with generally accepted accounting principles and auditing standards by a certified public accountant licensed in this state or another state. The interim financial statements must cover the period from the end date of the annual statement and must show the financial condition of the applying contractor no more than 4 months before the date that the interim financial statements are received by the department. However, upon the request of the applying contractor, an application and accompanying annual or interim financial statement received by the department within 15 days after either 4-month period under this subsection shall be considered timely. An applying contractor desiring to bid exclusively for the performance of construction contracts with proposed budget estimates of less than $2 ~~$1~~ million may submit reviewed annual or reviewed interim financial statements prepared by a certified public accountant. The information required by this subsection is confidential and exempt from s. 119.07(1). The department shall act upon the application for qualification within 30 days after the department determines that the application is complete. The department may waive the requirements of this subsection for projects having a contract

price of $500,000 or less if the department determines that the project is of a noncritical nature and the waiver will not endanger public health, safety, or property.

(4) If the applicant is found to possess the prescribed qualifications, the department shall issue to him or her a certificate of qualification that, unless thereafter revoked by the department for good cause, will be valid for a period of 18 months after the date of the applicant's financial statement or such shorter period as the department prescribes. Submission of an application does ~~and subsequent approval do~~ not affect expiration of the certificate of qualification~~, the ability factor of the applicant, or the maximum capacity rating of the applicant~~. An applicant may submit a written request with a timely submitted application to keep an existing certificate of qualification in place until the expiration date. If the request is approved by the department, the current maximum capacity rating of the applicant must remain in place until expiration of the current certificate of qualification.** If the department finds that an application is incomplete or contains inadequate information or information that cannot be verified, the department may request in writing that the applicant provide the necessary information to complete the application or provide the source from which any information in the application may be verified. If the applicant fails to comply with the initial written request within a reasonable period of time as specified therein, the department shall request the information a second time. If the applicant fails to comply with the second request within a reasonable period of time as specified therein, the application shall be denied.

(7) A "contractor" as defined in s. 337.165(1)(d) or his or her "affiliate" as defined in s. 337.165(1)(a) qualified with the department under this section may not also qualify under s. 287.055 or s. 337.105 to provide testing services, construction, engineering, and inspection services to the department. This limitation does not apply to any design-build, including progressive design-build, prequalification under s. 337.11(7) and does not apply when the department otherwise determines by written order entered at least 30 days before advertisement that the limitation is not in the best interests of the public with respect to a particular contract for testing services, construction, engineering, and inspection services. This subsection does not authorize a contractor to provide testing services, or provide construction, engineering, and inspection services, to the department in connection with a construction contract under which the contractor is performing any work. Notwithstanding any other provision of law to the contrary, for a project that is wholly or partially funded by the department and administered by a local governmental entity, except for a seaport listed in s. 311.09 or an airport as defined in s. 332.004, the entity performing design and construction engineering and inspection services may not be the same entity.

Section 6. Section 337.168, Florida Statutes, is amended to read:

337.168 Confidentiality of official estimates~~, identities of potential bidders,~~ and bid analysis and monitoring system.—

(1) A document or electronic file revealing the official cost estimate of the department of a project is confidential and exempt from the provisions of s. 119.07(1) until the contract

for the project has been executed or until the project is no longer under active consideration.

(2) ~~A document that reveals the identity of a person who has requested or obtained a bid package, plan, or specifications pertaining to any project to be let by the department is confidential and exempt from the provisions of s. 119.07(1) for the period that begins 2 working days before the deadline for obtaining bid packages, plans, or specifications and ends with the letting of the bid. A document that reveals the identity of a person who has requested or obtained a bid package, plan, or specifications pertaining to any project to be let by the department before the 2 working days before the deadline for obtaining bid packages, plans, or specifications remains a public record subject to s. 119.07(1).~~

~~(3)~~ The bid analysis and monitoring system of the department is confidential and exempt from the provisions of s. 119.07(1). This exemption applies to all system documentation, input, computer processes and programs, electronic data files, and output, but does not apply to the actual source documents, unless otherwise exempted under other provisions of law.

Section 7. This act shall take effect July 1, 2022.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 398
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism and Economic Development); Transportation Committee; and Senator Hooper
SUBJECT:	Transportation Projects
DATE:	March 2, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	**Fav/CS**
2.	McAuliffe/Price	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	McAuliffe	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 398 revises the current requirement for an annual minimum commitment by the Florida Department of Transportation (FDOT) of at least 15 percent of revenues deposited into State Transportation Trust Fund (STTF) for specified public transportation projects, by imposing a maximum commitment of no more than 25 percent of such revenues, excluding state revenues used for matching federal grants, unless otherwise specified in the General Appropriations Act.

The bill also clarifies the FDOT's authority to engage in "progressive" design-build contracting as an innovative technique of highway and bridge design and construction, exempts certain progressive design-build contracts from an existing cap on innovative contracts, and removes a limitation on design-build contracting to certain types of projects.

The bill clarifies that stipends paid by the FDOT to non-selected design-build firms that have submitted responsive proposals for construction contracts contained in the FDOT's legislatively approved work program are not subject to existing documentation and notification requirements for stipend payments made by the FDOT to resolve a bid protest through a settlement.

Additionally, the bill revises authorization for an applying contractor who desires to bid exclusively on construction contracts with proposed budget estimates of $2 million (rather than $1 million) to submit reviewed (rather than audited, certified) annual or reviewed interim

financial statements prepared by a certified public accountant. The bill also authorizes an applicant for an FDOT contractor certificate of qualification to submit with a timely submitted application a request to keep an existing certificate, with the current maximum capacity rating, in place until the expiration date.

Further, the bill repeals a current provision of law providing temporary confidential and exempt status from public records requirements for a document that reveals the identity of a person who has requested or obtained a bid package, plan, or specifications pertaining to any project to be let by the FDOT.

The fiscal impact of the bill is indeterminate. Please see the "Fiscal Impact Statement" for details.

The bill takes effect July 1, 2022.

II. Present Situation:

For ease of organization and readability, the present situation is discussed below in conjunction with the effect of the proposed changes.

III. Effect of Proposed Changes:

Public Transportation Funding from the State Transportation Trust Fund (Section 1)

Present Situation

Section 206.46(1), F.S., creates the STTF, and all moneys in the trust fund must be used for transportation purposes, as provided by law, under the direction of the FDOT. The FDOT is required to annually commit from the STTF a minimum of 15 percent of all state revenues deposited into the trust fund for public transportation projects in accordance with ch 311, F.S. (relating to seaport programs and facilities), ss. 332.003-332.007, F.S. (relating to airports), ch. 341, F.S. (relating to public transit), and ch. 343, F.S. (relating to regional transportation).

Projects eligible for funding under ch. 311, F.S., include, for example, transportation facilities (*e.g.,* roads) within the jurisdiction of a port, under the Florida Seaport Transportation and Economic Development Program.[1] Sections 332.003-332.007, F.S., make up the Florida Airport Development and Assistance Act, which provides funding for projects at public airports such as

[1] While bus service to and from a port could qualify as an eligible project, a variety of other projects are also eligible, such as dredging or deepening of channels, turning basins, or harbors; acquisition of land to be used for port purposes; and construction of wharves, docks, and cruise terminals. *See* s. 311.07(3)(b), F.S., for a full list of projects eligible for grant funding under the Florida Seaport Transportation and Economic Development Program.

airport master planning,[2] airport development,[3] and airport discretionary capacity improvements.[4]

Chapter 341, F.S., relating to "public transit" (the transporting of people by conveyances, or a system of conveyances, traveling on land or water, local or regional in nature, and available for use by the public, including paratransit)[5] could include projects such as a public transit capital project,[6] a commuter assistance project,[7] a transit corridor project,[8] or an intercity bus service project.[9]

Chapter 343, F.S., relating to regional transportation, establishes the South Florida Regional Transportation Authority, the Central Florida Regional Transportation Authority, and the Tampa Bay Regional Transit Authority. As an example of currently authorized uses of public transportation funding in the context of regional transportation, s. 343.58(4), F.S., requires specified amounts to be transferred from the STTF to the South Florida Regional Transportation Authority, which operates Tri-Rail, a passenger rail service in Broward, Palm Beach, and Miami-Dade Counties. As another example, s. 341.303, F.S., authorizes specified funding from the STTF for SunRail, a passenger rail system currently operating in Volusia, Seminole, Orange, and Osceola counties.

Various projects under these programs may be eligible for use of state revenues in the STTF to match available federal funds.

The 15-percent public transportation requirement does not apply to certain STTF revenues. Current law contains a number of provisions exempting certain revenue from the 15-percent public transportation requirement, such as those from rental car surcharges under s. 212.0606, F.S.; from initial registration fees under s. 320.072, F.S.; and from local option fuel taxes under s. 215.211, F.S. The FDOT advises that while state revenues in Fiscal Year 2022-

[2] Defined to mean "the development, for planning purposes, of information and guidance to determine the extent, type, and nature of development needed at a specific airport." Section 332.004(3), F.S.
[3] Meaning "any activity associated with the design, construction, purchase, improvements, or repair of a public-use airport or portion thereof…" Section 332.004(4), F.S.
[4] Defined as "capacity improvements which are consistent, to the maximum extent feasible, with the approved local government comprehensive plans of the units of local government in which the airport is located and which enhance intercontinental capacity at [specified] airports…" Section 332.004(5), F.S.
[5] Section 341.031(6), F.S.
[6] Defined to mean "a project undertaken by a public agency to provide public transit to its constituency, and is limited to acquisition, design, construction, reconstruction, or improvement of a governmentally owned or operated transit system." Section 341.031(7), F.S.
[7] Meaning "financial and technical assistance by the department to promote alternatives to the use of automobiles by a single commuter." The term includes ridesharing, transportation demand management, and transportation management association projects. *See* s. 341.031(9), F.S.
[8] Defined to mean "a project that is undertaken by a public agency and designed to relieve congestion and improve capacity within an identified transportation corridor by increasing people-carrying capacity of the system through the use and facilitated movement of high-occupancy conveyances." *See* s. 341.031(10), F.S., for additional definitional requirements.
[9] Defined as "regularly scheduled bus service for the general public which operates with limited stops over fixed routes connecting two or more urban areas not in close proximity…" *See* s. 341.031(11), F.S., for additional definitional requirements.

2023 are projected at over $4.7 billion, more than $1.4 billion (30 percent) of that revenue is exempt.[10]

In addition, while some revenue streams are exempt from the 15-percent requirement, a requirement for use of a given revenue stream for public transportation may still be present. For example, s. 201.15, F.S., requires 10 percent of documentary tax proceeds deposited into the STTF to be used for the New Starts Program and s. 339.0801, F.S., requires $10 million annually from tag and title fees to be used for the Seaport Investment Program.

According to FDOT, "[i]t is important to note that some of the state funds allocated for public transportation are allocated to comply with the 15% requirement specified in s. 206.46(3), F.S., while other state funds are allocated to comply with statutory use requirements for documentary stamp taxes, tag and title fees, and initial registration fees."[11]

The FDOT reports public transportation programming as of July 1, 2021 (in millions) as follows:[12]

State Funds Programmed for Public Transportation

FY	Total Public Transportation	Part of the 15-Percent Requirement	Percent Programmed Subject to the 15-Percent Requirement
2016-2017	$648.0	$487.6	16.8
2017-2018	$783.6	$530.3	17.7
2018-2019	$878.9	$598.8	20.0
2019-2020	$844.0	$568.8	19.4
2020-2021	$852.0	$545.0	18.4
2021-2022	$1,060.2	$568.0	18.0
2022-2023	$893.7	$619.6	18.9
2023-2024	$862.9	$568.9	16.8
2024-2025	$770.8	$551.9	15.9
2025-2026	$877.1	$587.3	16.6

Effect of Proposed Changes

Section 1 of the bill amends s. 206.46(3), F.S., to provide a cap on the amount of state revenues deposited into the STTF that can be used for public transportation projects of 25 percent. Unless otherwise specified in the General Appropriations Act, the FDOT must commit at least 15 percent, but no more than 25 percent, of state revenues for such projects. The calculation for

[10] *See* FDOT, *2022 Agency Legislative Bill Analysis: SB 398*, p. 3 (on file in the Senate Transportation Committee).
[11] FDOT, *2022 Agency Legislative Bill Analysis: SB 398*, p. 3
[12] *Id.*

purposes of determining the allowable funding range for the specified projects would not include the amount of state revenues used for federal grant matching.

Design-Build, Progressive Design-Build, and Innovative Contracting (Sections 2 and 3)

Present Situation

The FDOT is generally authorized to enter into construction and maintenance contracts and must ensure that all project descriptions, including design plans, "are complete, accurate, and up to date prior to the advertisement for bids on such projects."[13]

Current law also authorizes the FDOT, if it determines that doing so is in the public interest, to combine the design and construction phases of a building, a major bridge, a limited access facility, or a rail corridor project into a single contract, referred to as a "design-build" contract.[14]

The FDOT is also authorized to establish a program for transportation projects that demonstrate innovative techniques of highway and bridge design, construction, maintenance, and finance. The innovations must intend to measure resiliency and structural integrity and control time and cost increases on construction projects. These techniques may include state-of-the-art technology for pavement, safety, and other aspects of highway and bridge design, construction, and maintenance; innovative bidding and financing techniques; accelerated construction procedures; and techniques that have the potential to reduce project life cycle costs.[15]

To the maximum extent practical, the FDOT must use existing processes to award and administer construction and maintenance contracts. If the FDOT intends to use specific innovative techniques, it must document the need for any exceptions to current law that would otherwise prohibit use of the techniques.

The FDOT is limited to $120 million annually for the purposes of contracting for innovative transportation projects. However, the annual cap currently does not apply to:

- Turnpike Enterprise projects, and
- Low-bid design-build milling and resurfacing contracts.[16]

According to the Design-Build Institute of America (DBIA), design-build projects enable the project owner to manage only one contract, with the designer and contractor working together from the beginning and providing consensus project recommendations to fit the owner's schedule and budget. The entire team addresses any necessary changes, which leads "to collaborative problem-solving and innovation...." This method of project delivery, the DBIA asserts, creates an inherent "culture of collaboration."[17] As described by the DBIA, the "progressive" type of design-build contract "uses a qualifications-based or best value selection,

[13] Section 337.11(1) and (2), F.S.
[14] Section 337.11(7)(a), F.S.
[15] Section 337.025(1), F.S.
[16] Section 337.025(2), F.S.
[17] *See* DBIA, *What is Design-Build*, available at https://dbia.org/what-is-design-build/ (last visited December 15, 2021).

followed by a process whereby the owner then 'progresses' towards a design and contract price with the team (thus the term 'Progressive')."[18]

The Florida Transportation Builders' Association (FTBA) advises that traditional design-build contracting has produced nearly two decades of successful projects and that progressive design-build contracting represents an evolution from traditional design-build, allowing better allocation and management of unforeseen conditions and risks[19] encountered during the design of the project. Once the design-build firm is selected based on qualifications, including past performance, the firm then works collaboratively with the FDOT to "progress or advance" the design until the design contains sufficient detail to competitively bid the work.[20] As opposed to the FDOT's general contracting authority, under which design plans must be complete, accurate, and up to date prior to advertising for bids, pricing in a progressive design-build contract is delayed until design is closer to completion.

The FTBA further advises that progressive design-build contracting is already being used by the Greater Orlando Aviation Authority and the Tampa International Airport Authority.[21] According to the DBIA, at least two other states are currently authorized to engage in some form of progressive design-build contracting.[22]

Based on a review of the FDOT's Work Program Instructions for development of the Tentative Work Program for Fiscal Years 2022-2023 – 2026-2027, the FDOT, if not already in use under its existing design-build authority, appears to be contemplating the use of "progressive" design-build contracts under its authorization to undertake transportation projects that demonstrate innovative techniques of highway and bridge design, construction, maintenance, and finance.[23] Such contracting under current law would be subject to the $120 million statutory cap.

Effect of Proposed Changes

Section 2 of the bill amends s. 337.025, F.S., relating to the FDOT's authority to undertake innovative transportation projects, to expressly authorize the FDOT to use progressive design-build contacts for such projects.

The bill authorizes the FDOT, if it determines that doing so is in the best interests of the public, to combine the design and construction phases of a project into a single contract and select the design-build firm in the early stages of a project to ensure that the firm is part of the collaboration and development of the design as part of a step-by-step progression through construction. The bill refers to such a contract as a progressive design-build contract.

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[18] *See* DBIA, *Progressive Design-Build, Design-Build Procured with a Progressive Design and Price*, at p. 3, available at https://dbia.org/wp-content/uploads/2018/05/Primer-Progressive-Design-Build.pdf (last visited December 15, 2021).
[19] *E.g.*, variable and unsuitable soils beneath a roadway or bridge foundations, utility relocation issues, and other unforeseen conditions.
[20] *See* FTBA email to Transportation Committee staff, November 30, 2021 (on file in the Senate Transportation Committee).
[21] *Id.*
[22] *See* DBIA, *2021 State Statute Report*, available at https://dbia.org/wp-content/uploads/2021/01/2021-DBIA-State-Statute-Report.pdf (last visited December 15, 2021).
[23] *See* FDOT, *Work Program Instructions, FY 22/23-26/27*, September 10, 2021, available at https://fdotewp1.dot.state.fl.us/fmsupportapps/Documents/development/WorkProgramInstructions.pdf (last visited December 15, 2021).

The bill requires the selection and award processes for a progressive design-build contract to involve a two-phase process. In the first phase, the FDOT must competitively award the contract to a design-build firm based upon the firm's qualifications. In phase two, the selected firm must competitively bid construction trade subcontractor packages and, based upon these bids, negotiate with the FDOT for a fixed price or a guaranteed maximum price that meets the project budget and scope as advertised in the request for qualifications.

In addition, the bill exempts progressive design-build contracts for complex, high-risk projects with a minimum contract value of $400 million from the annual $120 million cap on innovative contracting.

Section 3 of the bill amends s. 337.11(7), F.S., relating to the FDOT's authority to engage in design-build contracting, to allow the FDOT to combine the design and construction phases of any project into a single contract, not just for a building, a major bridge, a limited access facility, or a rail corridor project.

Though the bill repeals the exemption for low-bid design-build milling and resurfacing contracts from the $120 million cap on innovative transportation project, by removing the limitation on design-build contracting to the design and construction phases of a building, a major bridge, a limited access facility, or a rail corridor project, "traditional" low-bid design-build milling and resurfacing contracts would not be subject to the cap. The FDOT would be authorized to use "traditional" design-build contracting for any type of project. These "traditional" (or non-innovative) contracts would not be included in the $120 million annual cap on innovative contracting, as is the case under current law for certain projects as discussed above.

Under the bill, the FDOT would be authorized to use progressive design-build contracting as an innovative contracting technique, subject to the $120 million annual cap. The annual cap on innovative contracting would continue to be inapplicable to Turnpike Enterprise projects and would be inapplicable to progressive design-build contracts for complex, high-risk projects with a minimum contract value of $400 million.

FDOT Contracting and Procurement Authority/Settlements and Stipends (Section 4)

Present Situation

When the FDOT determines that doing so is in the best interest of the public and intends, *through a settlement*, to pay a non-selected responsive bidder a total sum of $1 million or more, including any amount paid pursuant to s. 334.049, F.S. (patents, copyrights, trademarks, and trade secrets), s. 337.11(8), F.S. (stipends to non-selected, responsive design-build firms), or any other law, current law requires the FDOT to:[24]

- Document in a written memorandum by the FDOT secretary the specific reasons that such settlement and payment to a non-selected responsive bidder is in the best interest of the state. The written memorandum must be included and maintained in the permanent procurement files of the FDOT and must include:

[24] Section 337.1101(1), F.S.

  - A description of the property rights, patent rights, copyrights, trademarks, or the engineering design or other design work that the department will acquire or retain as a result of such settlement; and
  - The specific appropriation in the existing General Appropriations Act which the department intends to use to provide such payment.
- Provide prior written notification to the President of the Senate, the Speaker of the House of Representatives, the Senate and House of Representatives minority leaders, the chair and vice chair of the Legislative Budget Commission, and the Attorney General at least 5 business days, or as soon thereafter as practicable, before the FDOT makes the settlement agreement final. Such written notification must include the written memorandum described above.
- Provide written notification of such discussions to the same individuals at the time settlement discussions regarding any such payment have begun in earnest.

The FDOT is separately authorized, when the FDOT determines that doing so is in the best interest of the public, to pay a stipend to non-selected design-build firms that have submitted responsive proposals to the FDOT for construction contracts.[25] These projects are included in the FDOT's legislatively approved work program. The decision and amount of a stipend must be based on the FDOT's analysis of the estimated proposal development costs and the anticipated degree of engineering design during the procurement process. The FDOT retains the right to use the designs in the proposals from responsive non-selected design-build firms that accept a stipend.

A review of the FDOT's work program instructions suggests that the amount of a stipend to be paid is noted in the request for proposals for a design-build project. The FDOT enters into a stipend agreement with each firm after the proposals are "shortlisted,"[26] and each agreement states that the firm that receives the project contract award will not get the stipend. The non-selected firms then submit an invoice within two weeks after the project contract is executed and are paid the stipend amount noted in the request for proposals.[27]

While the FDOT might settle a bid protest through payment of a stipend, in contrast to any amounts paid by the FDOT that would trigger the documentation and notice requirements *for a settlement*, stipends paid by the FDOT pursuant to its separate authority are authorized payments arrived at by contract *during the procurement process*.

Effect of Proposed Changes

Section 4 of the bill amends s. 337.1101(1), F.S., to clarify that stipends paid by the FDOT to non-selected design-build firms that have submitted responsive proposals for construction contracts contained in the FDOT's legislatively approved work program are not subject to existing documentation and notification requirements for stipend payments made by the FDOT to resolve a bid protest through a settlement. If the FDOT pays a stipend to *settle* a bid protest in an amount that triggers the requirements, the FDOT must continue to comply with the documentation and notification requirements.

[25] Section 337.11(8), F.S.
[26] A "shortlist" is a list of selected candidates from which a final choice is to be made.
[27] *See* FDOT, *Work Program Instructions FY 22/23 – 26/27*, p. 370 of 847.

Contractor Certificates of Qualification (Section 5)

Present Situation

Current law requires any contractor desiring to bid on any FDOT construction contract in excess of $250,000 to first be certified by the FDOT as qualified pursuant to s. 337.14, F.S., and the FDOT's rules.[28] When applying to the FDOT, each application for certification must be accompanied by the contractor's latest annual financial statement, which must have been completed within the last 12 months. If the application or the annual financial statement shows the contractor's financial condition more than four months prior to the date on which the FDOT receives the application, the contractor must also submit an interim financial statement and an updated application.[29] Each required annual or interim financial statement must be audited and accompanied by the opinion of a certified public accountant (CPA). However, an applying contractor who desires to bid exclusively for the performance of construction contracts with proposed budget estimates of less than $1 million may submit reviewed annual or reviewed interim financial statements prepared by a CPA.[30]

The FDOT's rules include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor which are necessary to perform the specific class of work for which the contractor seeks certification. In so doing, the FDOT verifies and evaluates whether an applicant is competent and responsible and possesses the necessary financial resources to perform the requested work.[31]

Part of the latter inquiry involves whether an applicant has the financial resources sufficient to establish a maximum capacity rating (MCR), which is defined as the total aggregate dollar amount of *uncompleted* work an applicant may have under contract at any one time as a prime contractor and/or subcontractor, regardless of the work location and with whom the applicant contracted.[32] According to the FDOT's rules, the MCR is established by a formula, one element of which is the "ability factor." The FDOT's rules require an applicant's maximum capacity rating to be reduced by the total value of their current uncompleted work, producing the applicant's "current capacity," or bidding capacity. Under the rule, the current capacity must be amended immediately upon issuance of a new certificate of qualification, regardless of whether the existing certificate has expired.[33]

Currently, if an applicant for a certificate of qualification is found to possess the prescribed qualifications, the FDOT must issue the applicant a certificate, which, unless revoked by the FDOT for good cause, is valid for a period of 18 months after the date of the applicant's financial statement, or such shorter period as the FDOT prescribes. Submission of an application

[28] Rule Chapter 14-22, F.A.C.
[29] The interim statements must cover the period from the end date of the annual statement and must show the financial condition of the applying contractor no more than four months prior to the date the FDOT receives the interim statement but, upon request of the applicant, an application and accompanying annual or interim financial statement received by the FDOT within 15 days after either four-month period is considered timely.
[30] A reviewed annual or reviewed interim financial statement is less expensive than an audited, certified annual or interim financial statement.
[31] Rule 14-22.003(1), F.A.C.
[32] Rule 14.22-003(1)(d) and (2), F.A.C.
[33] Rule 14-22.006(1), F.A.C.

does not affect expiration of the certificate and, as of July 1, 2021, does not affect the ability factor of the applicant or the maximum capacity rating of the applicant.[34]

The FTBA advises the FDOT has requested revision of the current language to address overlapping certificates of qualification and any changes in the amount of new work that a firm can bid, due to a revised maximum capacity rating. As an example, the FTBA describes a potential situation in which a firm is allowed to bid on a $1 million contract under its existing certificate of qualification and then is later found nonresponsive when a new certificate is issued to the firm during the time leading up to the submission of a bid, due to a revised (lower) capacity rating.[35]

Effect of Proposed Changes

Section 5 of the bill amends s. 337.14, F.S, to increase from $1 million to $2 million the proposed budget estimate amount for triggering authorization of an applying contractor to submit reviewed annual or reviewed interim financial statements prepared by a CPA, instead of audited, certified statements. An applying contractor who desires to bid exclusively on construction contracts with proposed budget estimates of $2 million or less may submit reviewed annual or reviewed interim financial statements prepared by a CPA.

The bill also repeals the current provisions providing that submission of an application does not affect the ability factor or the maximum capacity rating of an applicant for an FDOT certificate of qualification. Instead, the bill authorizes an applicant to submit a written request to the FDOT with a timely submitted application to keep an existing certificate in place until its expiration date. If the FDOT approves the request, the applicant's current maximum capacity rating must remain in place until expiration of the current certification. In the absence of the FDOT's approval and in accordance with the FDOT's existing rules, the current capacity must be amended immediately upon issuance of a new certificate of qualification, regardless of whether the existing certificate has expired. The bill also makes a conforming change to the statute.

Public Records Exemption/Confidentiality of Identities of Bidders (Section 6)

Present Situation

Section 336.168(1) and (3), F.S., establish confidential and exempt status from public records requirements of s. 119.07(1), F.S., for:

- A document or electronic file revealing the FDOT's official cost estimate of a project until the contract for the project has been executed or until the project is no longer under active consideration; and
- The FDOT's bid analysis and monitoring system, including all system documentation, input, computer processes and programs, electronic data files, and output. This does not apply to the actual source documents, unless otherwise exempted under other provisions of law.

[34] Section 337.14(4), F.S. *See* s. 10, ch. 2021-188, Laws of Fla., which added the ability factor and MCR as things not being affected by the submission of an application.
[35] *See* FTBA email to Transportation Committee staff, November 30, 2021 (on file in the Senate Transportation Committee).

Section 337.168(2), F.S., currently provides that a document[36] revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by the department is confidential and exempt from the provisions of s. 119.07(1), F.S., for the period which begins two working days before the deadline for obtaining bid packages, plans, or specifications and ends with the letting of the bid. A document that reveals the identity before the two working days before the deadline for obtaining bid packages, plans, or specifications remains a public record.

The FDOT maintains a website that lists the identity of those who have requested or obtained bid packages for a given project.[37] The lists contain for each person a vendor identification number, an indication of the name of the entity that ordered the documents, and a shipping address and phone number for each. The lists do not appear to contain any information which would be exempt other any other provisions of law. The FDOT advises the lists are published daily, except for during the two-day confidential period defined in current law, and a comprehensive list is then published after the letting occurs.[38]

The issue appears to relate to small contractors, who use the identities of potential bidders for the purpose of submitting sub-contract bids to general contractors for their use in preparing bids for FDOT projects.[39]

Effect of Proposed Changes

Section 6 of the bill amends s. 337.168(2), F.S., to repeal the temporary public records exemption for a document revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by the FDOT. According to the FTBA, this revision provides full transparency as to the identity of potential bidders during the entire procurement process.[40]

Effective Date (Section 7)

The bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[36] The FDOT advises that many documents submitted by contractors contain both exempt and non-exempt information. Telephone conversation between FDOT staff and Senate Transportation Committee staff, November 24, 2021. In accordance with s. 119.07(1)(d), F.S., the FDOT would be required to redact any information contained in a document that reveals the identity of persons who have requested or obtained bid packages if the information is exempt under any other provision of law.

[37] *See e.g.*, FDOT, *Contractors ordering Plans and Specs by Letting Report*, available at https://fdotwp2.dot.state.fl.us/ContractProposalProcessing/CPPA and *Contractors ordering Proposals by Letting Report*, available at https://fdotwp2.dot.state.fl.us/ContractProposalProcessing/CPPA (last visited November 24, 2021). Enter "guest" for the user name and select "Sign in."

[38] *See* FDOT email to Transportation Committee staff, November 24, 2021 (on file in the Senate Transportation Committee).

[39] Telephone conversation between FDOT staff and Senate Transportation Committee staff, November 24, 2021.

[40] *See* FTBA email to Transportation Committee staff, November 30, 2021 (on file in the Senate Transportation Committee).

B. Public Records/Open Meetings Issues:

None. The bill does not expand public records exemptions.

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 fiscal impact of the revisions relating to FDOT contractor certificates of qualification is indeterminate.

Increasing the budget estimate amount for construction contracts from $1 million to $2 million for certain contractors exclusively bidding, allowing these additional contractors to submit reviewed financial statements should reduce the costs on these contractors to submit bids. A reviewed annual or reviewed interim financial statement is less expensive than an audited, certified annual or interim financial statement.

C. Government Sector Impact:

The impact on current funding levels, if any, of imposing a maximum commitment of no more than 25 percent of state revenues in the STTF for the identified public transportation projects, excluding those used for matching federal grants, as well as any effect on other projects in the work program, is dependent on funding levels selected by the FDOT within the authorized range. To the extent that funding for public transportation projects is increased above currently programmed levels within the cap, other projects in the work program may be impacted.

The fiscal impact of the revisions relating to design-build, progressive design-build, and innovative contracting is indeterminate, as the number and details of any such contracts to be undertaken by the FDOT is unknown.

The fiscal impact of the revisions relating to FDOT contractor certificates of qualification, if any, is indeterminate. The FDOT may incur expenses associated with

revising Rule Chapter 14-22 of the Florida Administrative Code relating to contractor qualification. These expenses, if rule revision is necessary, are expected to be absorbed within existing resources.

The FDOT may experience an indeterminate, but likely insignificant negative fiscal impact associated with responding to requests for documents that reveal the identity of a potential bidder on a transportation project, including, if necessary, redacting any information contained in a document which is made exempt under any other provisions of law, for a two-day period during which such a record would have been exempt under current law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The FDOT has raised concerns regarding the 25-percent public transportation funding cap imposed by the bill, relating to decreased long-term flexibility in preparing the work program.[41]

Current law requires the FDOT to adopt by rule procedures for administering design-build contracts and specifies what must be minimally included in the procedures.[42] As drafted, the bill is unclear as to whether the procedures adopted to administer design-build contracts also apply to progressive-design build contracts. Failure to adopt by rule any procedures applicable to progressive design-build contracts could result in a challenge under the Administrative Procedures Act.[43] An amendment to existing s. 377.11(7)((b), F.S., to expressly include progressive design-build contracts in the rulemaking requirement may be in order.

The FDOT has also expressed concerns regarding the repeal of the temporary public records exemption for the identity of persons who have requested bid packages, relating to a potential negative impact on the procurement process.[44]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 206.46, 337.025, 337.11, 337.1101, 337.14, and 337.168.

[41] FDOT, *2022 Agency Legislative Bill Analysis: SB 398*, pp. 8-9.
[42] Section 337.11(7)(b), F.S.
[43] *See* s. 120.56(4), F.S.
[44] FDOT, *2022 Agency Legislative Bill Analysis: SB 398*, p. 6.

IX. Additional Information:

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

CS/CS by Appropriations on February 28, 2022:
The committee substitute:

- Increases the minimum contract value of certain progressive design-build contracts that are exempt from the annual cap on innovative transportation projects, from $250 million contract value to a $400 contract value.
- Moves the amendatory provisions allowing the FDOT to enter into progressive design-build contracts from s. 377.11, F.S., to being amended into s. 337.025, F.S.
- Clarifies that stipends paid by the FDOT to non-selected design-build firms that have submitted responsive proposals for construction contracts contained in the FDOT's legislatively-approved work program are not subject to existing documentation and notification requirements for stipend payments made by the FDOT to resolve a bid protest through a settlement.
- Increases from $1 million to $2 million the proposed budget estimate amount for triggering authorization of an applying contractor to submit reviewed annual or reviewed interim financial statements prepared by a CPA, instead of audited, certified statements.

CS by Transportation on December 1, 2021:
The committee substitute:

- Modifies the minimum 15-percent and maximum 25-percent commitment of state revenues in the STTF for the specified public transportation projects if otherwise provided in the General Appropriations Act.
- Includes progressive design-build contracting as an authorized innovative technique of highway and bridge design and construction projects, excludes certain progressive design-build contracts from an annual $120 million cap on innovative transportation projects, and removes inapplicability of the cap to low-bid design-build milling and resurfacing contracts.
- Removes a limitation on the FDOT's authority to combine the design and construction phases (a "design-build" project) to a building, a major bridge, a limited access facility, or a rail corridor project, authorizing the FDOT to combine the design and construction phases of any type of project into a single design-build contract.
- Authorizes the FDOT, if it determines that doing so is in the best interests of the public, to use progressive design-build contracting, using a specified two-phase process, the first involving the design-build firm's qualifications and, the second involving negotiations on price.
- Removes the maximum capacity rating of an applicant for a contractor certificate of qualification as factors that do not affect the expiration of a certificate, authorizes an applicant to submit a request to keep an existing certificate of qualification in place until the expiration date and, if approved by the FDOT, keep the current maximum capacity rating of the applicant in place until expiration of the current certificate of qualification.

- Removes the entire subsection of current law containing the temporary public records exemption for a document revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by the FDOT, instead of leaving unnecessary language deeming such a document to be a public record.
- Removes from the bill authorization of the FDOT to use moneys in the STTF to pay for work zone speed enforcement by entering into an agreement with the FHP.

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 Transportation; and Senator Hooper

596-01437-22 2022398c1

A bill to be entitled

An act relating to transportation projects; amending s. 206.46, F.S.; revising the requirement for the annual commitment of State Transportation Trust Fund revenues for public transportation projects by the Department of Transportation; amending s. 337.025, F.S.; providing that the department's program for innovative transportation projects may include progressive design-build contracts; revising contracts exempt from a specified annual monetary cap on contracts; amending s. 337.11, F.S.; revising the department's authority relating to design-build contracts; authorizing the department to enter into a progressive design-build contract if it makes a certain determination; providing procedures and requirements for progressive design-build contracts; exempting progressive design-build contracts from certain requirements; requiring the department to adopt rules; amending s. 337.14, F.S.; revising procedures relating to certificates of qualification issued by the department to construction contractors seeking certification to bid on certain contracts; amending s. 337.168, F.S.; deleting a public records exemption for certain documents revealing the identity of a potential bidder; providing an effective date.

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

Section 1. Subsection (3) of section 206.46, Florida

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596-01437-22 2022398c1

Statutes, is amended to read:

206.46 State Transportation Trust Fund.—

(3) Unless otherwise specified in the General Appropriations Act, each fiscal year, at least ~~a minimum of~~ 15 percent but not more than 25 percent of all state revenues deposited into the State Transportation Trust Fund, excluding state revenues used for matching federal grants, shall be committed annually by the department for public transportation projects in accordance with chapter 311, ss. 332.003-332.007, chapter 341, and chapter 343.

Section 2. Section 337.025, Florida Statutes, is amended to read:

337.025 Innovative transportation projects; department to establish program.—

(1) The department may establish a program for transportation projects demonstrating innovative techniques of highway and bridge design, construction, maintenance, and finance which have the intended effect of measuring resiliency and structural integrity and controlling time and cost increases on construction projects. Such techniques may include, but are not limited to, state-of-the-art technology for pavement, safety, and other aspects of highway and bridge design, construction, and maintenance; innovative bidding and financing techniques; progressive design-build contracts; accelerated construction procedures; and those techniques that have the potential to reduce project life cycle costs. To the maximum extent practical, the department must use the existing process to award and administer construction and maintenance contracts. When specific innovative techniques are to be used, the

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department is not required to adhere to those provisions of law that would prevent, preclude, or in any way prohibit the department from using the innovative technique. However, before using an innovative technique that is inconsistent with another provision of law, the department must document in writing the need for the exception and identify what benefits the traveling public and the affected community are anticipated to receive. The department may enter into no more than $120 million in contracts awarded annually for the purposes authorized by this section.

(2) The annual cap on contracts provided in subsection (1) does not apply to:

(a) Turnpike enterprise projects.

(b) Progressive design-build contracts for complex, high-risk projects with a minimum contract value of $250 million ~~Low-bid design-build milling and resurfacing contracts~~.

Section 3. Subsection (7) of section 337.11, Florida Statutes, is amended to read:

337.11 Contracting authority of department; bids; emergency repairs, supplemental agreements, and change orders; combined design and construction contracts; progress payments; records; requirements of vehicle registration.—

(7)(a) If the department determines that it is in the best interests of the public, the department may combine the design and construction phases of a ~~building, a major bridge, a limited access facility, or a rail corridor~~ project into a single contract. Such contract is referred to as a design-build contract.

(b) If the department determines that it is in the best

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interests of the public, the department may combine the design and construction phases of a project into a single contract and select the design-build firm in the early stages of a project to ensure that the design-build firm is part of the collaboration and development of the design as part of a step-by-step progression through construction. Such contract is referred to as a progressive design-build contract. For progressive design-build contracts, the selection and award processes must include a two-phase process. For phase one, the department shall competitively award the contract to a design-build firm based upon qualifications. For phase two, the design-build firm shall competitively bid construction trade subcontractor packages and, based upon these bids, negotiate with the department a fixed firm price or guaranteed maximum price that meets the project budget and scope as advertised in the request for qualifications.

(c) Design-build contracts and progressive design-build contracts may be advertised and awarded notwithstanding the requirements of paragraph (3)(c). However, construction activities may not begin on any portion of such projects for which the department has not yet obtained title to the necessary rights-of-way and easements for the construction of that portion of the project has vested in the state or a local governmental entity and all railroad crossing and utility agreements have been executed. Title to rights-of-way shall be deemed to have vested in the state when the title has been dedicated to the public or acquired by prescription.

(d) ~~(b)~~ The department shall adopt by rule procedures for administering design-build contracts and progressive design-

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build contracts. Such procedures shall include, but not be limited to:

1. Prequalification requirements.
2. Public announcement procedures.
3. Scope of service requirements.
4. Letters of interest requirements.
5. Short-listing criteria and procedures.
6. Bid proposal requirements.
7. Technical review committee.
8. Selection and award processes.
9. Stipend requirements.

(e) ~~(c)~~ The department must receive at least three letters of interest in order to proceed with a request for proposals. The department shall request proposals from no fewer than three of the design-build firms submitting letters of interest. If a design-build firm withdraws from consideration after the department requests proposals, the department may continue if at least two proposals are received.

Section 4. Subsection (4) of section 337.14, Florida Statutes, is amended to read:

337.14 Application for qualification; certificate of qualification; restrictions; request for hearing.—

(4) If the applicant is found to possess the prescribed qualifications, the department shall issue to him or her a certificate of qualification that, unless thereafter revoked by the department for good cause, will be valid for a period of 18 months after the date of the applicant's financial statement or such shorter period as the department prescribes. Submission of an application does ~~and subsequent approval do~~ not affect

expiration of the certificate of qualification~~, the ability factor of the applicant, or the maximum capacity rating of the applicant~~. An applicant may submit a written request with a timely submitted application to keep an existing certificate of qualification in place until the expiration date. If the request is approved by the department, the current maximum capacity rating of the applicant must remain in place until expiration of the current certificate of qualification. If the department finds that an application is incomplete or contains inadequate information or information that cannot be verified, the department may request in writing that the applicant provide the necessary information to complete the application or provide the source from which any information in the application may be verified. If the applicant fails to comply with the initial written request within a reasonable period of time as specified therein, the department shall request the information a second time. If the applicant fails to comply with the second request within a reasonable period of time as specified therein, the application shall be denied.

Section 5. Section 337.168, Florida Statutes, is amended to read:

337.168 Confidentiality of official estimates~~, identities of potential bidders,~~ and bid analysis and monitoring system.—

(1) A document or electronic file revealing the official cost estimate of the department of a project is confidential and exempt from the provisions of s. 119.07(1) until the contract for the project has been executed or until the project is no longer under active consideration.

(2) ~~A document that reveals the identity of a person who~~

~~has requested or obtained a bid package, plan, or specifications pertaining to any project to be let by the department is confidential and exempt from the provisions of s. 119.07(1) for the period that begins 2 working days before the deadline for obtaining bid packages, plans, or specifications and ends with the letting of the bid. A document that reveals the identity of a person who has requested or obtained a bid package, plan, or specifications pertaining to any project to be let by the department before the 2 working days before the deadline for obtaining bid packages, plans, or specifications remains a public record subject to s. 119.07(1).~~

~~(3)~~ The bid analysis and monitoring system of the department is confidential and exempt from the provisions of s. 119.07(1). This exemption applies to all system documentation, input, computer processes and programs, electronic data files, and output, but does not apply to the actual source documents, unless otherwise exempted under other provisions of law.

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

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 552 (589784)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); and Senator Boyd and others
SUBJECT:	Clerks of the Circuit Court
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Favorable**
2.	Dale	Harkness	ACJ	**Recommend: Fav/CS**
3.	Dale	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 552 changes laws affecting the clerks of court by:

- Directing the clerks of court to ask the Legislature for increased funding related to increases in trial court judicial positions.
- Allowing the clerks to review property records to verify an application for civil indigent status.
- Allowing the clerks of court to ask for Legislative funding for filings related to mental health and substance abuse that the clerks must currently file at no charge. Modifying the standard terms of a payment plan for an individual who owes money to a clerk to establish a $25 minimum monthly payment and to limit the down payment to the lesser of 10 percent of the amount owed or $100.
- Requiring the Department of Highway Safety and Motor Vehicles to coordinate with the clerks of court on a system for reinstatement of driver licenses upon payment of court-related obligations.

The bill has no fiscal impact but makes fiscally related operational changes.

The bill takes effect July 1, 2022.

II. Present Situation:

Clerk of the Circuit Court

The clerk of the circuit court is a constitutional officer. Each of Florida's 67 counties are required to elect a clerk of the circuit court[1] to serve as both the clerk of court, completing judiciary functions, and as the "*ex officio*[2] clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds."[3] In other words, the clerk of the circuit court wears approximately five hats. In wearing the auditor and custodian of county funds hats, the clerk may also be referred to as the comptroller.[4]

Funding for the Clerks' Court-Related Functions

In its capacity as the clerk of the circuit and county courts, the clerk is required to perform various court-related, administrative and ministerial functions. Any court-related function authorized by law or court rule must be funded by the clerk's collection of filing fees, service charges, costs, and fines, including the following:

- Case maintenance.
- Records management.
- Court preparation and attendance.
- Processing the assignment, reopening, and reassignment of cases.
- Processing appeals.
- Collection and distribution of fines, fees, service charges, and court costs.
- Data collection and reporting.
- Determinations of indigent status.
- Paying reasonable administrative support costs to enable the clerks to carry out court-related functions.[5]

Court funding is governed by Art. V, s. 14 of the Florida Constitution. For the clerks of the circuit courts, Art. V, s. 14(b) provides that the clerks are self-sustaining and fund their court-related functions through the collection of filing fees, service charges, and other costs. Specifically, Art. V, s. 14(b) states:

> (b) All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this

[1] FLA. CONST. art. V, s. 16; FLA. CONST. art. VIII, s. 1.
[2] *See* BLACK'S LAW DICTIONARY (10th ed. 2014) ("*ex officio*" means "By virtue or because of an office; by virtue of the authority implied by office.").
[3] FLA. CONST. art. V, s. 16. This provision also provides that two officials may split the position, one serving as clerk of court and one serving in the *ex officio* position. Additionally, this provision permits the election of a county clerk of court when authorized by general or special law. *Id.*
[4] *See generally* Florida Court Clerks & Comptrollers, *About Us, Clerks Duties & Services*, available at https://www.flclerks.com/page/ClerksDuties (last visited Nov. 24, 2021). *See also* BLACK'S LAW DICTIONARY (10th ed. 2014) ("comptroller" means, "[a]n officer of a business or a private, state, or municipal corporation who is charged with duties usu. relating to fiscal affairs, including auditing and examining accounts and reporting the financial status periodically.").
[5] Section 28.35(3)(a), F.S. *See also* Florida Court Clerks & Comptrollers, *About Us, Clerks Duties & Services*, available at https://www.flclerks.com/page/ClerksDuties (last visited Nov. 24, 2021).

> subsection and subsection (c), shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined by the Legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.[6]

County Funding Referenced in Article V, Section 14(c)

As referenced above, Art. V, s. 14(c) of the Florida Constitution states that while funding for the state courts system, including the clerks of court, will *not* be required by a county or municipality, the counties are responsible to fund certain types of court infrastructure and maintenance, including "the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems and the cost of construction or lease, maintenance, utilities, and security of facilities for . . . the offices of the clerks of the circuit and county courts performing court-related functions."[7] Additionally, counties pay "reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law."[8]

No-Fee Court Functions

Additionally, as referenced above, there are certain categories of cases and certain types of filings for which the clerks of court cannot charge a filing fee and possibly other service charges or other costs. These types of cases and filings include the following:

- Various services and filings for indigent parties to pending litigation.[9]
- Petitions for Habeas Corpus filed by persons detained as mental health patients.[10]
- Filing an ex parte order for involuntary examination (Baker Act).[11]
- Petitions for involuntary inpatient placement for mental health.[12]
- Appellate filing fees for indigent persons determined to be and involuntarily committed as a sexually violent predator.[13]

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[6] FLA. CONST. art. V, s. 14(b) (emphasis added).
[7] FLA. CONST. art. V, s. 14(c).
[8] *Id.* Additionally, article V, section 14(a) provides that funding for state court systems as well as state attorney's offices, public defender's offices, and court-appointed counsel will generally be paid from "state revenues appropriated by general law"; and section 14(d) clarifies that the court system has no appropriations authority.
[9] Sections 57.081 and 57.082, F.S. This does not include prisoners as defined in s. 57.085, F.S.
[10] Section 394.459, F.S.
[11] Section 394.463, F.S. *See also Collins v. State*, 125 So. 3d 1046, 1047 (Fla. 4th DCA 2013) (noting s. 394.463, F.S., is also known as the Florida Statutes Florida Mental Health Act or the Baker Act).
[12] Section 394.467, F.S.
[13] Section 394.917, F.S.

- Petitions for involuntary assessment and stabilization for substance abuse impairment.[14]
- Petitions for a risk protection order (Marjory Stoneman Douglas High School Public Safety Act).[15]
- Petitions for protective injunctions against domestic violence,[16] repeat, dating, or sexual violence,[17] or stalking.[18]

History of the Clerks of Court Funding Model

1998 Article V Revision ("Revision 7") and Implementing Legislation

Article V, s. 14, was amended in 1998 to "substantially and significantly revise[] judicial system funding, greatly reducing funding from local governments and placing the responsibility primarily on the state."[19] The statement of intent accompanying the revision of Art. V, section 14(b), also known as "Revision 7," reflects that the proposers intended for the Legislature to adopt procedures: (1) to fund the clerks' office in the event "filing fees, services charges and costs are insufficient to cover the court-related salaries, costs, and expenses of the offices of the clerks . . . in a given fiscal year"; and (2) for the disposition of excess revenues collected by the clerks' offices in a given fiscal year.[20]

Further, the statement of intent clarifies that the purpose for Revision 7 is to require legislative oversight and an independent review of clerk funding and spending practices. The reason for independent oversight is set out as follows:

> The drafters of subsection (b) recognize that there currently exists significant disparities among what the various clerks' offices spend to perform the same functions. The determination by the [L]egislature as to the appropriate level of spending should not entail an acceptance of the current level of spending by the clerks' offices throughout the state to perform court-related functions. Rather, it is the intent of this proposal that the clerks be held accountable and responsible to a cost standard which is independently established by the [L]egislature.[21]

Revision 7's 1998 amendment to Article V had to be implemented by July 1, 2004.[22] In order to implement the 1998 amendment, the Legislature responded "in stages, beginning with passage of SB 1212 in 2000 (Chapter 2000-237, Laws of Florida), followed by additional changes to that

[14] Section 397.6814, F.S.
[15] Section 790.401, F.S.; ch. 2018-3, s. 16, Laws of Fla.
[16] Section 741.30, F.S.
[17] Section 784.046, F.S.
[18] Section 784.0485, F.S.
[19] *City of Fort Lauderdale v. Crowder*, 983 So. 2d 37, 39 (Fla. 4th DCA 2008) ("In its Statement of Intent, the Constitution Revision Commission explained: 'The state's obligation includes, but is not limited to, funding for all core functions and requirements of the state courts system and all other court-related functions and requirements *which are statewide in nature.*' [e.s.] 26 Fla. Stat. Ann. (Supp.) 67.").
[20] William A. Buzzett and Deborah K. Kearney, *Commentary <1998 Amendment (1997-1998 Constitution Revision Commission Revision 7)>*, FLA. STAT. ANN., FLA. CONST. art. V, s. 14.
[21] *Id.*
[22] *Office of State Attorney for Eleventh Judicial Circuit v. Polites*, 904 So. 2d 527, 530 (Fla. 3d DCA 2005).

law in 2001, and, finally in 2002, through the funding of a study to assist in the final phase of implementation."[23]

The final stage was implemented during the 2003 legislative session. To provide Revision 7's envisioned oversight, accountability, uniformity, and procedures in funding and budgeting for the clerks of court, the Legislature enacted **sections 28.35, 28.36, and 28.37, F.S.**: [24]

- **Section 28.35, F.S.**, created the Florida Clerks of Court Operations Corporation (Corporation),[25] which is responsible for providing accountability, procedural review, and oversight of the clerks of court budgeting process throughout the state.
- **Section 28.36, F.S.,** established budget review and approval procedures of individual clerk of court budgets by the Corporation.
- **Section 28.37, F.S.**, ensures that a portion of certain fines, fees, service charges, and costs collected by the clerks of court are remitted to the state to fund other court-related salaries, costs, and expenses.

Post-Article V Revision to Clerk Funding: 2004-2008

Between 2004 and 2008, the clerks collected and deposited into their local fine and forfeiture funds revenues from court filing fees, service charges, court costs, and fines assessed in civil and criminal proceedings.[26] A portion of the revenues in a clerk's fine and forfeiture fund was retained to finance the clerk's operations. However, another portion of these revenues were distributed to the General Revenue Fund or other state trust funds to meet other court-related costs. For example, the clerks were required to remit one-third of all fines, fees, service charges, and costs collected to the Department of Revenue for deposit into the Clerk of the Court Trust Fund,[27] a fund established to assist the clerks in meeting revenue deficits.

Regarding budget planning, the clerks had discretion to set their individual budgets based on anticipated revenues and expenditures. Each clerk's proposed budget had to be balanced with estimated revenues equaling or exceeding anticipated expenditures, although the budget could include a 10 percent contingency reserve.[28] If a clerk estimated that available funds plus projected revenues were insufficient to meet anticipated expenditures for court-related functions, that clerk could follow the statutory procedure for receiving funds from the Clerks of the Court Trust Fund to address the deficit.[29]

Each clerk had to submit its proposed budget to the Corporation for review and certification that the individual budget was complete and complied with budget procedures.[30] Upon review and

[23] Florida House of Representatives, *House Bill 113A Staff Analysis*, (May 14, 2003).
[24] 2003 Fla. Sess. Law Serv. Ch. 2003-402 (H.B. 113–A). *See also City of Ft. Lauderdale v. Crowder*, 983 So. 2d 37, 39 (Fla. 4th DCA 2008). Note also that the bill seeks to amend each of these provisions.
[25] *See supra* note 5, and text. When it was first enacted, section 28.35 the "Clerk of court Operations Conference" which was changed in 2004 to the "Florida Clerks of Court Operations Corporation." Chapter 2004-265, s. 23, Laws of Fla. All clerks are members of the Corporation.
[26] Section 142.01, F.S.
[27] Section 28.37(2), F.S. (2008).
[28] Section 28.36(3)(b), (c), F.S. (2008).
[29] Section 28.36(4), F.S. (2008).
[30] Section 28.36(3), F.S. (2008).

certification by the Corporation, revenue exceeding the amount needed to fund each budget was deposited in the General Revenue Fund.[31]

During this time, the Legislature's involvement in the clerks' budgets was limited. The Legislative Budget Commission (LBC) had authority to approve increases to the maximum annual budgets approved for individual clerks if the additional funding was necessary to:

- Pay the cost of performing new or additional functions required by changes in law or court rule; or
- Pay the cost of supporting increases in the number of judges or magistrates authorized by the Legislature.[32]

Clerks in the General Appropriations Act: 2009-2012

In an effort to gain greater oversight and accountability for the operations and funding of the clerks of court, the Legislature passed Chapter 2009-204, Laws of Fla., which substantially amended the clerks' statutory budget process and procedures. The new law brought the clerks into the state budget and appropriated their funding in the annual General Appropriations Act.

More specifically, the 2009 law required that all revenues received by the clerks from court-related fees, fines, costs and service charges be remitted to the Department of Revenue for deposit into the Clerks of Court Trust Fund within the Justice Administrative Commission (JAC).[33] The law permitted the clerks, however, to deposit 10 percent of all court-related fines in the Public Records Modernization Trust Fund to be used in addition to state appropriations for operational needs.[34]

By 2009, revenues accruing to the Clerks of Court Trust Fund began to decline due to the downturn in the economy and the reduction in foreclosure filing fees. As a result, the Legislature reinforced the clerks' budgets with additional moneys from the General Revenue Fund. The 2011 Legislature appropriated $44.2 million from the General Revenue Fund to address FY 2010-2011 revenue deficits and the 2012 Legislature appropriated $57.6 million to address FY 2011-2012 deficits.

Return to Pre-2009 Funding Model: 2013-2019[35]

In 2013, the Legislature reversed many of the 2009 funding model changes, but expanded the oversight and accountability in the clerks' budget process. Significantly, the 2013 law[36] added the following:

[31] Section 28.37(4), F.S. (2008).
[32] Section 28.36(6), F.S. (2008).
[33] Chapter 2009-204, ss. 5-8, 12, 14, 19, Laws of Fla. The clerks' budgets were appropriated within the JAC budget from 2009-2012. *See also* s. 43.16, F.S. (establishes the Justice Administrative Commission, which administratively serves 49 judicial-related entities, as well as provides compliance and financial review of billings for services provided by private court-appointed attorneys representing indigent citizens and associated due process vendors).
[34] Section 28.37(5), F.S.
[35] This section adapted or used in its entirety from the Appropriations Committee staff analysis in SB 2506 (2017).
[36] Chapter 2013-44, Laws of Fla.

- Monthly accounting: required each clerk to submit all collected revenues exceeding one-twelfth of the clerk's total budget for the prior month to the Department of Revenue for deposit into the Clerks of the Court Trust Fund.
- Annual accounting: required the transfer of revenue exceeding one-twelfth of the clerks' total budget out of the Clerks of Court Trust Fund into the General Revenue Fund each January *unless* the official estimate by the Revenue Estimating Conference projects a trust fund deficit (based on the current budget) in the current or upcoming fiscal year.
- Corporation audits: directed the Corporation to conduct annual base budget reviews, conduct cost-comparisons of similarly situated clerks, report pay and benefit issues, and provide an explanation of any clerk expenditure increases over 3 percent.[37]
- Corporation budget standard: required the Corporation to use the official Article V Revenue Estimating Conference revenue estimates for the clerks' budget process.[38]

The 2013 law also enhanced the role and responsibilities of the Legislative Budget Commission (LBC), and directed the LBC to review the budgets of the clerks and eitherapprove, disapprove, or amend and approve the budgets by October 1 of each year.[39] In 2017, however, the Legislature removed these duties from the LBC to review the clerks' budgets.[40]

Most Recent Changes: 2019 to present

The clerk's budget process was amended again in 2019.[41] In addition to the total estimated revenues from fees, service charges, costs, and fines for court-related functions available for court-related expenditures as determined by the most recent Revenue Estimating Conference, the combined budget for the clerks of court may also include:

- The unspent budgeted funds for court-related functions carried forward by the clerks of court from the previous county fiscal year; and
- The balance of funds remaining in the Clerks of the Court Trust Fund after the transfer of funds to the General Revenue Fund required pursuant to s. 28.37, F.S.

In 2019, the requirement that the cumulative excess of all fines, fees, service charges, and costs retained by the clerks of court exceeding the amount needed to fund their authorized budgets was transferred to the General Revenue Fund, was changed as follows:

- No later than February 1, 2020, the cumulative excess of all fines, fees, services charges, and costs exceeding $10 million will be transferred to the General Revenue Fund.
- No later than February 1, 2021, and no later than February 1, 2022, not less than 50 percent of the cumulative excess of all fines, fees, services charges, and costs will be transferred to the General Revenue Fund; provided, however, that the balance remaining in the Clerks of Courts Trust Fund after the transfer may not exceed $20 million.
- No later than February 1, 2023, and each February 1 thereafter, the cumulative excess of all fines, fees, services charges, and costs will be transferred to the General Revenue Fund.

[37] Section 28.35(2)(f), F.S.
[38] Section 28.35(2)(f)6., F.S.
[39] Section 11.90(6)(d), F.S.
[40] Chapter 2017-126, s. 1, Laws of Fla.
[41] Chapter 2019-58, Laws of Fla.

In that same act, the 2019 Legislature was looking ahead to 2022 by including a requirement that the Office of Program Policy Analysis and Government Accountability (OPPAGA) review the Clerk of Court processes, including, in part, a comparison of organizational arrangement and deployment of personnel resources among all clerks' offices. The Legislature is required to review and consider the results of the report before the 2022 Regular Session of the Legislature in deciding whether to extent or reenact the provisions of the 2019 changes relating to clerk funding. The OPPAGA report contains 26 recommendations for operational efficiency and cost savings in five categories. [42]

III. Effect of Proposed Changes:

This bill primarily makes fiscally related operational changes to the clerks of court as follows.

Clerk of Courts Operations Corporation

The bill adds to the list of duties required of the Clerk of Courts Operations Corporation the duty to:

- Recommend to the Legislature changes in the distribution of monies collected by a clerk.
- Recommend to the Legislature an increase in a clerk's budget representing the total increased costs associated with clerk support of a new trial court judicial position, based on a formula approved by the Corporation.
- Develop on an annual basis a budget request for the anticipated amount necessary for reimbursement of certain no-fee cases related to mental health and substance abuse (see below). The request is not subject to change by the Justice Administrative Commission, and it must be submitted to the Governor for transmittal to the Legislature.

Payment Plans

Persons who pay money to the clerk of court for an outstanding fine, penalty, fee, service charge, or court cost are expected to pay in full. Many individuals, however, cannot afford to pay. Current law authorizes a clerk to accept partial payments and to enter into payment plans with individuals.[43] Monthly payments of no more than 2 percent of the individual's net pay is presumed to be within an individual's ability to pay.[44]

The bill changes the terms of payment plans offered by a clerk to a person unable to immediately pay monies owed to the clerk. The bill establishes a minimum monthly payment of $25, and establishes a maximum initial payment of the lesser of 10 percent of the debt or $100. The $5 partial payment service charge[45] or the alternative one-time $25 service charge for establishing a payment plan,[46] are payable in addition to the maximum allowable initial payment and, thus, are not a part of the limits.

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[42] Florida Clerks of Court Study, *Final Report* (November 15, 2019), *available at* https://oppaga.fl.gov/Products/ReportDetail?rn=19-CLERKS

[43] Section 28.246(4), F.S.,

[44] Using the 2021 Florida minimum wage at full-time employment and subtracting the standard federal payroll deductions, an unmarried individual at that wage would pay no more than $26.80 a month on a clerk's payment plan.

[45] Section 28.24(27)(b), F.S.

[46] Section 28.24(27)(c), F.S.

Civil Indigent Application Investigation

An individual seeking appointment of an attorney in a civil case who is eligible for court-appointed counsel, or seeking relief from prepayment of civil filing fees, must apply to the clerk for a determination of civil indigent status. There is a presumption that an individual is not indigent if the individual has a net equity of $2,500 or more, excluding homestead and excluding equity in a vehicle of up to $5,000.[47] The clerk must accept the application on its face and may not independently verify the information provided.[48]

The bill allows a clerk of court to make a limited investigation of an individual's application for status as civil indigent. The clerk may conduct a review of the property records for the county in which the applicant resides and the motor vehicle title records of this state to identify any property interests of the applicant. The clerk may evaluate and consider the results of the review in making a determination of civil indigent status. If a review is conducted, the results must be in the court file should the applicant appeal the denial of civil indigent status to the trial court.

Driver License Suspensions

Numerous laws provide for driver license suspensions due to nonpayment of court obligations. Currently, there are separate processes for reinstatement of the driver license based on the reason for the suspension. Where the suspension is due to nonpayment of a traffic infraction, upon receipt of full payment the clerk immediately clears the suspension by notice to the Department of Highway Safety and Motor Vehicles (DHSMV).[49] Where the suspension is court-related but not traffic-related, notably suspensions for delinquency in payment of child support obligations or criminal court fees and fines,[50] the process is different and longer. There, the clerk of court collects the monies owed and furnishes the person with an affidavit that the financial obligation that led to the suspension has been paid. The person must then go to a county tax collector's office to reinstate the driver license with DHSMV. Until the process is complete, the person's license remains suspended.[51]

The bill requires the DHSMV to coordinate with the clerks of court, through their association, to ensure the capability within the department's technology systems for clerks of court to reinstate suspended driver licenses that have been suspended for failure to pay court-related obligations.

Clerk Reimbursement for Certain No-Fee Cases

Clerks of court are supposed to be primarily funded by filing fees and service charges.[52] However, some civil cases are processed by the clerks without payment, notably protective injunctions, mental health, substance abuse, and civil actions filed by indigents. During the

[47] Section 57.082(2)(a)2., F.S.
[48] Section 57.082(2)(d), F.S.
[49] Section 318.15, F.S.; Florida Court Clerks & Comptrollers, *Bill Analysis of SB 552* (November 24, 2021).
[50] Section 322.245, F.S.
[51] Florida Court Clerks & Comptrollers, *Bill Analysis of SB 552* (November 24, 2021).
[52] FLA. CONST. article V, s. 14(b).

2019-20 county fiscal year, the clerks opened 183,991 civil files without payment of a filing fee to the clerk.[53]

Subject to appropriation, the bill allows a clerk of court to submit to the Justice Administrative Commission a certified request for $40 per case reimbursement for services rendered in certain no-fee civil cases related to mental health and substance abuse. The request for reimbursement must be submitted in the form and manner prescribed by the Justice Administrative Commission. The categories of cases are:

- Habeas corpus filed by an individual detained under the Florida Mental Health Act,[54] pursuant to s. 394.459(8)(d), F.S.
- Determination whether an individual should be subject to an involuntary mental health examination under the Florida Mental Health Act, pursuant to s. 394.463(2)(a), F.S.
- Determination whether an individual should be subject to involuntary mental health placement in a mental health facility under the Florida Mental Health Act, pursuant to s. 394.467(3), F.S.
- Determination whether an individual is a sexually violent predator subject to commitment to a mental health facility for sexually violent predators, pursuant to s. 394.917(3), F.S. and Part V of ch. 394, F.S.
- Determination of whether an individual should be involuntarily assessed and stabilized due to substance abuse, pursuant to s. 397.6814, F.S.[55]

Effective Date

The bill is effective 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 Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[53] Florida Court Clerks & Comptrollers, *Bill Analysis of SB 552* (November 24, 2021). There were 135,672 statutory no-fee cases and 48,319 cases filed by indigents.
[54] The Florida Mental Health Act is also known as the Baker Act.
[55] Chapter 397, F.S., is also known as the Marchman Act.

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: 28.246, 28.35, 40.29, 57.082, and 322.29, F.S.

IX. Additional Information:

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

PCS (589784) by Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice):
The proposed committee substitute:

- Removes the section that decreases the share of certain foreclosure filing fees transferred to the General Revenue Fund.
- Removes the section that changes the distribution of a county court filing fee from the General Revenue Fund to the clerks of court.
- Removes the section that requires a judge or traffic infraction hearing officer to impose the minimum financial penalty after finding an offender guilty of a traffic infraction.

B. Amendments:

None.

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

589784

576-02592-22

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to clerks of the circuit court; amending s. 28.246, F.S.; revising the calculation used to determine the presumed ability to pay certain fees, charges, costs, and fines; providing a formula for determining a specified down payment; providing construction; amending s. 28.35, F.S.; requiring the Florida Clerks of Court Operations Corporation to provide a recommendation on the distribution of specified fines, fees, charges, and costs; requiring the corporation to complete specified duties under certain circumstances; requiring the corporation to annually prepare a specified budget request; providing that such a request is not subject to change by the Justice Administrative Commission; requiring the commission to submit the request to the Governor for transmittal to the Legislature; amending s. 40.29, F.S.; authorizing clerks of the circuit court to submit, at prescribed intervals, to the commission certified requests for reimbursement of specified petitions and orders at a certain rate per petition or order; amending s. 57.082, F.S.; authorizing clerks of the court to conduct a review of specified records; requiring the clerks to maintain the results of such review in a specified manner and provide the results to the court under certain circumstances; amending s. 322.29, F.S.; requiring the Department of Highway

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576-02592-22

Safety and Motor Vehicles to work with a specified association to ensure that their technology systems have specified capabilities; providing an effective date.

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

Section 1. Paragraph (b) of subsection (4) of section 28.246, Florida Statutes, is amended to read:

28.246 Payment of court-related fines or other monetary penalties, fees, charges, and costs; partial payments; distribution of funds.—

(4)

(b) An individual seeking to defer payment of fees, service charges, court costs, or fines imposed by operation of law or order of the court under any provision of general law shall apply to the clerk for enrollment in a payment plan. The clerk shall enter into a payment plan with an individual who the court determines is indigent for costs. It is the responsibility of an individual who is released from incarceration and has outstanding court obligations to contact the clerk within 30 days after release to pay fees, service charges, court costs, and fines in full, or to apply for enrollment in a payment plan.

1. A monthly payment amount, calculated based upon all fees and all anticipated fees, service charges, court costs, and fines, is presumed to correspond to the person’s ability to pay if the amount does not exceed the greater of:

a. Two ~~2~~ percent of the person’s annual net income, as defined in s. 27.52(1), divided by 12; or

b. $25.

2. Any amount required by the clerk as a down payment to initially establish a payment plan shall be the lesser of 10 percent of the total amount owed or $100. The amount does not include the imposition of a service charge pursuant to s. 28.24(27)(b) or (c). The clerk shall establish all terms of a payment plan, and the court may review the reasonableness of the payment plan.

Section 2. Paragraph (c) of subsection (2) of section 28.35, Florida Statutes, is amended, and paragraph (i) is added to that subsection, to read:

28.35 Florida Clerks of Court Operations Corporation.—

(2) The duties of the corporation shall include the following:

(c)1. Recommending to the Legislature changes in the amounts and distribution of the various court-related fines, fees, service charges, and costs established by law to ensure reasonable and adequate funding of the clerks of the court in the performance of their court-related functions.

2. If the number of judges under s. 26.031 or s. 34.022 increases:

a. Developing a formula to estimate the total cost associated with clerk support for circuit and county judges statewide.

b. Making a recommendation for consideration by the Legislature on any need for additional funding using the formula approved in sub-subparagraph a.

(i) Annually preparing a budget request that, notwithstanding chapter 216 and in accordance with s. 216.351,

provides the anticipated amount necessary for reimbursement pursuant to s. 40.29(6). The request for the anticipated reimbursement amount must be submitted in the form and manner prescribed by the Justice Administrative Commission. Such request is not subject to change by the Justice Administrative Commission except for technical changes necessary to conform to the legislative budget instructions and must be submitted by the Justice Administrative Commission to the Governor for transmittal to the Legislature.

Section 3. Section 40.29, Florida Statutes, is amended to read:

40.29 Payment of due-process costs; reimbursement for petitions and orders.—

(1) Each clerk of the circuit court, on behalf of the state attorney, private court-appointed counsel, the public defender, and the criminal conflict and civil regional counsel, shall forward to the Justice Administrative Commission, by county, a quarterly estimate of funds necessary to pay for ordinary witnesses, including, but not limited to, witnesses in civil traffic cases and witnesses of the state attorney, the public defender, criminal conflict and civil regional counsel, private court-appointed counsel, and persons determined to be indigent for costs. Each quarter of the state fiscal year, the commission, based upon the estimates, shall advance funds to each clerk to pay for these ordinary witnesses from state funds specifically appropriated for the payment of ordinary witnesses.

(2) Upon receipt of an estimate pursuant to subsection (1), the Justice Administrative Commission shall endorse the amount deemed necessary for payment by the clerk of the court during

the quarterly fiscal period and shall submit a request for payment to the Chief Financial Officer.

(3) Upon receipt of the funds from the Chief Financial Officer, the clerk of the court shall pay all invoices approved and submitted by the state attorney, the public defender, criminal conflict and civil regional counsel, and private court-appointed counsel for the items enumerated in subsection (1).

(4) After review for compliance with applicable rates and requirements, the Justice Administrative Commission shall pay all due process service related invoices, except those enumerated in subsection (1), approved and submitted by the state attorney, the public defender, criminal conflict and civil regional counsel, or private court-appointed counsel in accordance with the applicable requirements of ss. 29.005, 29.006, and 29.007.

(5) The Justice Administrative Commission shall reimburse funds to the clerks of the court to compensate jurors, to pay for meals or lodging provided to jurors, and to pay for jury-related personnel costs as provided in this section. Each clerk of the court must submit a request for reimbursement to the Florida Clerks of Court Operations Corporation within 20 days after each quarter attesting to the clerk's actual costs to compensate jurors, to pay for meals or lodging provided to jurors, and to pay for jury-related personnel costs. The Florida Clerks of Court Operations Corporation must review the request for reimbursement to ensure that the costs are reasonably and directly related to jury management. The Florida Clerks of Court Operations Corporation must forward to the Justice Administrative Commission the amount necessary to reimburse each

clerk of the court for its personnel and other costs related to jury management unless the total request for reimbursement by the clerks exceeds the quarterly funds available to the Justice Administrative Commission, in which case the Florida Clerks of Court Operations Corporation shall adjust the cumulative total to match the available funds before submitting the request to the Justice Administrative Commission. Upon receipt of each request for reimbursement, the Justice Administrative Commission must review the amount deemed necessary for payment to the clerks of the court for the most recently completed quarter, determine if the total payment amount is available, and submit a request for payment to the Chief Financial Officer. The clerks of the court are responsible for any compensation to jurors, for payments for meals or lodging provided to jurors, and for jury-related personnel costs that exceed the funding provided in the General Appropriations Act for these purposes.

(6) Subject to legislative appropriation, the clerk of the circuit court may, on a quarterly basis, submit to the Justice Administrative Commission a certified request for reimbursement for petitions and orders filed under ss. 394.459, 394.463, 394.467, 394.917, and 397.6814, at the rate of $40 per petition or order. Such request for reimbursement must be submitted in the form and manner prescribed by the Justice Administrative Commission pursuant to s. 28.35(2)(i).

Section 4. Paragraphs (a) and (d) of subsection (2) of section 57.082, Florida Statutes, are amended to read:

57.082 Determination of civil indigent status.—

(2) DETERMINATION BY THE CLERK.—The clerk of the court shall determine whether an applicant seeking such designation is


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indigent based upon the information provided in the application and the criteria prescribed in this subsection.

(a)1. An applicant, including an applicant who is a minor or an adult tax-dependent person, is indigent if the applicant's income is equal to or below 200 percent of the then-current federal poverty guidelines prescribed for the size of the household of the applicant by the United States Department of Health and Human Services.

2. There is a presumption that the applicant is not indigent if the applicant owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in any such property having a net equity value of $2,500 or more, excluding the value of the person's homestead and one vehicle having a net value not exceeding $5,000.

3. Notwithstanding the information provided by the applicant, the clerk may conduct a review of the property records for the county in which the applicant resides and the motor vehicle title records of this state to identify any property interests of the applicant under this paragraph. The clerk may evaluate and consider the results of the review in making a determination under this subsection. If a review is conducted, the clerk must maintain the results of the review in a file with the application and provide the file to the court if an applicant seeks a review under subsection (4) of the clerk's determination of indigent status.

(d) The duty of the clerk in determining whether an applicant is indigent is limited to receiving the application, conducting a review of records under subparagraph (a)3., and comparing the information provided in the application and


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identified in the review of records to the criteria prescribed in this subsection. The determination of indigent status is a ministerial act of the clerk and ~~may~~ not a decision ~~be~~ based on further investigation or the exercise of independent judgment by the clerk. The clerk may contract with third parties to perform functions assigned to the clerk under this section.

Section 5. Subsection (3) is added to section 322.29, Florida Statutes, to read:

322.29 Surrender and return of license.—

(3) The department shall work with the clerks of court, through their association, to ensure the ability within their technology systems for clerks of court to reinstate suspended driver licenses for failure to pay court obligations.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 552
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); and Senator Boyd and others
SUBJECT:	Clerks of the Circuit Court
DATE:	March 2, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Favorable**
2.	Dale	Harkness	ACJ	**Recommend: Fav/CS**
3.	Dale	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 552 changes laws affecting the clerks of court by:

- Directing the clerks of court to ask the Legislature for increased funding related to increases in trial court judicial positions.
- Allowing the clerks to review property records to verify an application for civil indigent status.
- Allowing the clerks of court to ask for Legislative funding for filings related to mental health and substance abuse that the clerks must currently file at no charge. Modifying the standard terms of a payment plan for an individual who owes money to a clerk to establish a $25 minimum monthly payment and to limit the down payment to the lesser of 10 percent of the amount owed or $100.
- Requiring the Department of Highway Safety and Motor Vehicles to coordinate with the clerks of court on a system for reinstatement of driver licenses upon payment of court-related obligations.

The bill has no fiscal impact but makes fiscally related operational changes.

The bill takes effect July 1, 2022.

II. Present Situation:

Clerk of the Circuit Court

The clerk of the circuit court is a constitutional officer. Each of Florida's 67 counties are required to elect a clerk of the circuit court[1] to serve as both the clerk of court, completing judiciary functions, and as the "*ex officio*[2] clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds."[3] In other words, the clerk of the circuit court wears approximately five hats. In wearing the auditor and custodian of county funds hats, the clerk may also be referred to as the comptroller.[4]

Funding for the Clerks' Court-Related Functions

In its capacity as the clerk of the circuit and county courts, the clerk is required to perform various court-related, administrative and ministerial functions. Any court-related function authorized by law or court rule must be funded by the clerk's collection of filing fees, service charges, costs, and fines, including the following:

- Case maintenance.
- Records management.
- Court preparation and attendance.
- Processing the assignment, reopening, and reassignment of cases.
- Processing appeals.
- Collection and distribution of fines, fees, service charges, and court costs.
- Data collection and reporting.
- Determinations of indigent status.
- Paying reasonable administrative support costs to enable the clerks to carry out court-related functions.[5]

Court funding is governed by Art. V, s. 14 of the Florida Constitution. For the clerks of the circuit courts, Art. V, s. 14(b) provides that the clerks are self-sustaining and fund their court-related functions through the collection of filing fees, service charges, and other costs. Specifically, Art. V, s. 14(b) states:

> (b) All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this

[1] FLA. CONST. art. V, s. 16; FLA. CONST. art. VIII, s. 1.
[2] *See* BLACK'S LAW DICTIONARY (10th ed. 2014) ("*ex officio*" means "By virtue or because of an office; by virtue of the authority implied by office.").
[3] FLA. CONST. art. V, s. 16. This provision also provides that two officials may split the position, one serving as clerk of court and one serving in the *ex officio* position. Additionally, this provision permits the election of a county clerk of court when authorized by general or special law. *Id.*
[4] *See generally* Florida Court Clerks & Comptrollers, *About Us*, *Clerks Duties & Services*, available at https://www.flclerks.com/page/ClerksDuties (last visited Nov. 24, 2021). *See also* BLACK'S LAW DICTIONARY (10th ed. 2014) ("comptroller" means, "[a]n officer of a business or a private, state, or municipal corporation who is charged with duties usu. relating to fiscal affairs, including auditing and examining accounts and reporting the financial status periodically.").
[5] Section 28.35(3)(a), F.S. *See also* Florida Court Clerks & Comptrollers, *About Us*, *Clerks Duties & Services*, available at https://www.flclerks.com/page/ClerksDuties (last visited Nov. 24, 2021).

> subsection and subsection (c), shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined by the Legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.[6]

County Funding Referenced in Article V, Section 14(c)

As referenced above, Art. V, s. 14(c) of the Florida Constitution states that while funding for the state courts system, including the clerks of court, will *not* be required by a county or municipality, the counties are responsible to fund certain types of court infrastructure and maintenance, including "the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems and the cost of construction or lease, maintenance, utilities, and security of facilities for . . . the offices of the clerks of the circuit and county courts performing court-related functions."[7] Additionally, counties pay "reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law."[8]

No-Fee Court Functions

Additionally, as referenced above, there are certain categories of cases and certain types of filings for which the clerks of court cannot charge a filing fee and possibly other service charges or other costs. These types of cases and filings include the following:

- Various services and filings for indigent parties to pending litigation.[9]
- Petitions for Habeas Corpus filed by persons detained as mental health patients.[10]
- Filing an ex parte order for involuntary examination (Baker Act).[11]
- Petitions for involuntary inpatient placement for mental health.[12]
- Appellate filing fees for indigent persons determined to be and involuntarily committed as a sexually violent predator.[13]

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[6] FLA. CONST. art. V, s. 14(b) (emphasis added).
[7] FLA. CONST. art. V, s. 14(c).
[8] *Id.* Additionally, article V, section 14(a) provides that funding for state court systems as well as state attorney's offices, public defender's offices, and court-appointed counsel will generally be paid from "state revenues appropriated by general law"; and section 14(d) clarifies that the court system has no appropriations authority.
[9] Sections 57.081 and 57.082, F.S. This does not include prisoners as defined in s. 57.085, F.S.
[10] Section 394.459, F.S.
[11] Section 394.463, F.S. *See also Collins v. State*, 125 So. 3d 1046, 1047 (Fla. 4th DCA 2013) (noting s. 394.463, F.S., is also known as the Florida Statutes Florida Mental Health Act or the Baker Act).
[12] Section 394.467, F.S.
[13] Section 394.917, F.S.

- Petitions for involuntary assessment and stabilization for substance abuse impairment.[14]
- Petitions for a risk protection order (Marjory Stoneman Douglas High School Public Safety Act).[15]
- Petitions for protective injunctions against domestic violence,[16] repeat, dating, or sexual violence,[17] or stalking.[18]

History of the Clerks of Court Funding Model

1998 Article V Revision ("Revision 7") and Implementing Legislation

Article V, s. 14, was amended in 1998 to "substantially and significantly revise[] judicial system funding, greatly reducing funding from local governments and placing the responsibility primarily on the state."[19] The statement of intent accompanying the revision of Art. V, section 14(b), also known as "Revision 7," reflects that the proposers intended for the Legislature to adopt procedures: (1) to fund the clerks' office in the event "filing fees, services charges and costs are insufficient to cover the court-related salaries, costs, and expenses of the offices of the clerks . . . in a given fiscal year"; and (2) for the disposition of excess revenues collected by the clerks' offices in a given fiscal year.[20]

Further, the statement of intent clarifies that the purpose for Revision 7 is to require legislative oversight and an independent review of clerk funding and spending practices. The reason for independent oversight is set out as follows:

> The drafters of subsection (b) recognize that there currently exists significant disparities among what the various clerks' offices spend to perform the same functions. The determination by the [L]egislature as to the appropriate level of spending should not entail an acceptance of the current level of spending by the clerks' offices throughout the state to perform court-related functions. Rather, it is the intent of this proposal that the clerks be held accountable and responsible to a cost standard which is independently established by the [L]egislature.[21]

Revision 7's 1998 amendment to Article V had to be implemented by July 1, 2004.[22] In order to implement the 1998 amendment, the Legislature responded "in stages, beginning with passage of SB 1212 in 2000 (Chapter 2000-237, Laws of Florida), followed by additional changes to that

[14] Section 397.6814, F.S.
[15] Section 790.401, F.S.; ch. 2018-3, s. 16, Laws of Fla.
[16] Section 741.30, F.S.
[17] Section 784.046, F.S.
[18] Section 784.0485, F.S.
[19] *City of Fort Lauderdale v. Crowder*, 983 So. 2d 37, 39 (Fla. 4th DCA 2008) ("In its Statement of Intent, the Constitution Revision Commission explained: 'The state's obligation includes, but is not limited to, funding for all core functions and requirements of the state courts system and all other court-related functions and requirements *which are statewide in nature.*' [e.s.] 26 Fla. Stat. Ann. (Supp.) 67.").
[20] William A. Buzzett and Deborah K. Kearney, *Commentary <1998 Amendment (1997-1998 Constitution Revision Commission Revision 7)>*, FLA. STAT. ANN., FLA. CONST. art. V, s. 14.
[21] *Id.*
[22] *Office of State Attorney for Eleventh Judicial Circuit v. Polites*, 904 So. 2d 527, 530 (Fla. 3d DCA 2005).

law in 2001, and, finally in 2002, through the funding of a study to assist in the final phase of implementation."[23]

The final stage was implemented during the 2003 legislative session. To provide Revision 7's envisioned oversight, accountability, uniformity, and procedures in funding and budgeting for the clerks of court, the Legislature enacted **sections 28.35, 28.36, and 28.37, F.S.**: [24]

- **Section 28.35, F.S.**, created the Florida Clerks of Court Operations Corporation (Corporation),[25] which is responsible for providing accountability, procedural review, and oversight of the clerks of court budgeting process throughout the state.
- **Section 28.36, F.S.,** established budget review and approval procedures of individual clerk of court budgets by the Corporation.
- **Section 28.37, F.S.**, ensures that a portion of certain fines, fees, service charges, and costs collected by the clerks of court are remitted to the state to fund other court-related salaries, costs, and expenses.

Post-Article V Revision to Clerk Funding: 2004-2008

Between 2004 and 2008, the clerks collected and deposited into their local fine and forfeiture funds revenues from court filing fees, service charges, court costs, and fines assessed in civil and criminal proceedings.[26] A portion of the revenues in a clerk's fine and forfeiture fund was retained to finance the clerk's operations. However, another portion of these revenues were distributed to the General Revenue Fund or other state trust funds to meet other court-related costs. For example, the clerks were required to remit one-third of all fines, fees, service charges, and costs collected to the Department of Revenue for deposit into the Clerk of the Court Trust Fund,[27] a fund established to assist the clerks in meeting revenue deficits.

Regarding budget planning, the clerks had discretion to set their individual budgets based on anticipated revenues and expenditures. Each clerk's proposed budget had to be balanced with estimated revenues equaling or exceeding anticipated expenditures, although the budget could include a 10 percent contingency reserve.[28] If a clerk estimated that available funds plus projected revenues were insufficient to meet anticipated expenditures for court-related functions, that clerk could follow the statutory procedure for receiving funds from the Clerks of the Court Trust Fund to address the deficit.[29]

Each clerk had to submit its proposed budget to the Corporation for review and certification that the individual budget was complete and complied with budget procedures.[30] Upon review and

[23] Florida House of Representatives, *House Bill 113A Staff Analysis*, (May 14, 2003).
[24] 2003 Fla. Sess. Law Serv. Ch. 2003-402 (H.B. 113–A). *See also City of Ft. Lauderdale v. Crowder*, 983 So. 2d 37, 39 (Fla. 4th DCA 2008). Note also that the bill seeks to amend each of these provisions.
[25] *See supra* note 5, and text. When it was first enacted, section 28.35 the "Clerk of court Operations Conference" which was changed in 2004 to the "Florida Clerks of Court Operations Corporation." Chapter 2004-265, s. 23, Laws of Fla. All clerks are members of the Corporation.
[26] Section 142.01, F.S.
[27] Section 28.37(2), F.S. (2008).
[28] Section 28.36(3)(b), (c), F.S. (2008).
[29] Section 28.36(4), F.S. (2008).
[30] Section 28.36(3), F.S. (2008).

certification by the Corporation, revenue exceeding the amount needed to fund each budget was deposited in the General Revenue Fund.[31]

During this time, the Legislature's involvement in the clerks' budgets was limited. The Legislative Budget Commission (LBC) had authority to approve increases to the maximum annual budgets approved for individual clerks if the additional funding was necessary to:

- Pay the cost of performing new or additional functions required by changes in law or court rule; or
- Pay the cost of supporting increases in the number of judges or magistrates authorized by the Legislature.[32]

Clerks in the General Appropriations Act: 2009-2012

In an effort to gain greater oversight and accountability for the operations and funding of the clerks of court, the Legislature passed Chapter 2009-204, Laws of Fla., which substantially amended the clerks' statutory budget process and procedures. The new law brought the clerks into the state budget and appropriated their funding in the annual General Appropriations Act.

More specifically, the 2009 law required that all revenues received by the clerks from court-related fees, fines, costs and service charges be remitted to the Department of Revenue for deposit into the Clerks of Court Trust Fund within the Justice Administrative Commission (JAC).[33] The law permitted the clerks, however, to deposit 10 percent of all court-related fines in the Public Records Modernization Trust Fund to be used in addition to state appropriations for operational needs.[34]

By 2009, revenues accruing to the Clerks of Court Trust Fund began to decline due to the downturn in the economy and the reduction in foreclosure filing fees. As a result, the Legislature reinforced the clerks' budgets with additional moneys from the General Revenue Fund. The 2011 Legislature appropriated $44.2 million from the General Revenue Fund to address FY 2010-2011 revenue deficits and the 2012 Legislature appropriated $57.6 million to address FY 2011-2012 deficits.

Return to Pre-2009 Funding Model: 2013-2019[35]

In 2013, the Legislature reversed many of the 2009 funding model changes, but expanded the oversight and accountability in the clerks' budget process. Significantly, the 2013 law[36] added the following:

[31] Section 28.37(4), F.S. (2008).
[32] Section 28.36(6), F.S. (2008).
[33] Chapter 2009-204, ss. 5-8, 12, 14, 19, Laws of Fla. The clerks' budgets were appropriated within the JAC budget from 2009-2012. *See also* s. 43.16, F.S. (establishes the Justice Administrative Commission, which administratively serves 49 judicial-related entities, as well as provides compliance and financial review of billings for services provided by private court-appointed attorneys representing indigent citizens and associated due process vendors).
[34] Section 28.37(5), F.S.
[35] This section adapted or used in its entirety from the Appropriations Committee staff analysis in SB 2506 (2017).
[36] Chapter 2013-44, Laws of Fla.

- Monthly accounting: required each clerk to submit all collected revenues exceeding one-twelfth of the clerk's total budget for the prior month to the Department of Revenue for deposit into the Clerks of the Court Trust Fund.
- Annual accounting: required the transfer of revenue exceeding one-twelfth of the clerks' total budget out of the Clerks of Court Trust Fund into the General Revenue Fund each January *unless* the official estimate by the Revenue Estimating Conference projects a trust fund deficit (based on the current budget) in the current or upcoming fiscal year.
- Corporation audits: directed the Corporation to conduct annual base budget reviews, conduct cost-comparisons of similarly situated clerks, report pay and benefit issues, and provide an explanation of any clerk expenditure increases over 3 percent.[37]
- Corporation budget standard: required the Corporation to use the official Article V Revenue Estimating Conference revenue estimates for the clerks' budget process.[38]

The 2013 law also enhanced the role and responsibilities of the Legislative Budget Commission (LBC), and directed the LBC to review the budgets of the clerks and either approve, disapprove, or amend and approve the budgets by October 1 of each year.[39] In 2017, however, the Legislature removed these duties from the LBC to review the clerks' budgets.[40]

Most Recent Changes: 2019 to present

The clerk's budget process was amended again in 2019.[41] In addition to the total estimated revenues from fees, service charges, costs, and fines for court-related functions available for court-related expenditures as determined by the most recent Revenue Estimating Conference, the combined budget for the clerks of court may also include:

- The unspent budgeted funds for court-related functions carried forward by the clerks of court from the previous county fiscal year; and
- The balance of funds remaining in the Clerks of the Court Trust Fund after the transfer of funds to the General Revenue Fund required pursuant to s. 28.37, F.S.

In 2019, the requirement that the cumulative excess of all fines, fees, service charges, and costs retained by the clerks of court exceeding the amount needed to fund their authorized budgets was transferred to the General Revenue Fund, was changed as follows:

- No later than February 1, 2020, the cumulative excess of all fines, fees, services charges, and costs exceeding $10 million will be transferred to the General Revenue Fund.
- No later than February 1, 2021, and no later than February 1, 2022, not less than 50 percent of the cumulative excess of all fines, fees, services charges, and costs will be transferred to the General Revenue Fund; provided, however, that the balance remaining in the Clerks of Courts Trust Fund after the transfer may not exceed $20 million.
- No later than February 1, 2023, and each February 1 thereafter, the cumulative excess of all fines, fees, services charges, and costs will be transferred to the General Revenue Fund.

[37] Section 28.35(2)(f), F.S.
[38] Section 28.35(2)(f)6., F.S.
[39] Section 11.90(6)(d), F.S.
[40] Chapter 2017-126, s. 1, Laws of Fla.
[41] Chapter 2019-58, Laws of Fla.

In that same act, the 2019 Legislature was looking ahead to 2022 by including a requirement that the Office of Program Policy Analysis and Government Accountability (OPPAGA) review the Clerk of Court processes, including, in part, a comparison of organizational arrangement and deployment of personnel resources among all clerks' offices. The Legislature is required to review and consider the results of the report before the 2022 Regular Session of the Legislature in deciding whether to extent or reenact the provisions of the 2019 changes relating to clerk funding. The OPPAGA report contains 26 recommendations for operational efficiency and cost savings in five categories. [42]

III. Effect of Proposed Changes:

This bill primarily makes fiscally related operational changes to the clerks of court as follows.

Clerk of Courts Operations Corporation

The bill adds to the list of duties required of the Clerk of Courts Operations Corporation the duty to:

- Recommend to the Legislature changes in the distribution of monies collected by a clerk.
- Recommend to the Legislature an increase in a clerk's budget representing the total increased costs associated with clerk support of a new trial court judicial position, based on a formula approved by the Corporation.
- Develop on an annual basis a budget request for the anticipated amount necessary for reimbursement of certain no-fee cases related to mental health and substance abuse (see below). The request is not subject to change by the Justice Administrative Commission, and it must be submitted to the Governor for transmittal to the Legislature.

Payment Plans

Persons who pay money to the clerk of court for an outstanding fine, penalty, fee, service charge, or court cost are expected to pay in full. Many individuals, however, cannot afford to pay. Current law authorizes a clerk to accept partial payments and to enter into payment plans with individuals.[43] Monthly payments of no more than 2 percent of the individual's net pay is presumed to be within an individual's ability to pay.[44]

The bill changes the terms of payment plans offered by a clerk to a person unable to immediately pay monies owed to the clerk. The bill establishes a minimum monthly payment of $25, and establishes a maximum initial payment of the lesser of 10 percent of the debt or $100. The $5 partial payment service charge[45] or the alternative one-time $25 service charge for establishing a payment plan,[46] are payable in addition to the maximum allowable initial payment and, thus, are not a part of the limits.

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[42] Florida Clerks of Court Study, *Final Report* (November 15, 2019), *available at* https://oppaga.fl.gov/Products/ReportDetail?rn=19-CLERKS

[43] Section 28.246(4), F.S.,

[44] Using the 2021 Florida minimum wage at full-time employment and subtracting the standard federal payroll deductions, an unmarried individual at that wage would pay no more than $26.80 a month on a clerk's payment plan.

[45] Section 28.24(27)(b), F.S.

[46] Section 28.24(27)(c), F.S.

Civil Indigent Application Investigation

An individual seeking appointment of an attorney in a civil case who is eligible for court-appointed counsel, or seeking relief from prepayment of civil filing fees, must apply to the clerk for a determination of civil indigent status. There is a presumption that an individual is not indigent if the individual has a net equity of $2,500 or more, excluding homestead and excluding equity in a vehicle of up to $5,000.[47] The clerk must accept the application on its face and may not independently verify the information provided.[48]

The bill allows a clerk of court to make a limited investigation of an individual's application for status as civil indigent. The clerk may conduct a review of the property records for the county in which the applicant resides and the motor vehicle title records of this state to identify any property interests of the applicant. The clerk may evaluate and consider the results of the review in making a determination of civil indigent status. If a review is conducted, the results must be in the court file should the applicant appeal the denial of civil indigent status to the trial court.

Driver License Suspensions

Numerous laws provide for driver license suspensions due to nonpayment of court obligations. Currently, there are separate processes for reinstatement of the driver license based on the reason for the suspension. Where the suspension is due to nonpayment of a traffic infraction, upon receipt of full payment the clerk immediately clears the suspension by notice to the Department of Highway Safety and Motor Vehicles (DHSMV).[49] Where the suspension is court-related but not traffic-related, notably suspensions for delinquency in payment of child support obligations or criminal court fees and fines,[50] the process is different and longer. There, the clerk of court collects the monies owed and furnishes the person with an affidavit that the financial obligation that led to the suspension has been paid. The person must then go to a county tax collector's office to reinstate the driver license with DHSMV. Until the process is complete, the person's license remains suspended.[51]

The bill requires the DHSMV to coordinate with the clerks of court, through their association, to ensure the capability within the department's technology systems for clerks of court to reinstate suspended driver licenses that have been suspended for failure to pay court-related obligations.

Clerk Reimbursement for Certain No-Fee Cases

Clerks of court are supposed to be primarily funded by filing fees and service charges.[52] However, some civil cases are processed by the clerks without payment, notably protective injunctions, mental health, substance abuse, and civil actions filed by indigents. During the

[47] Section 57.082(2)(a)2., F.S.
[48] Section 57.082(2)(d), F.S.
[49] Section 318.15, F.S.; Florida Court Clerks & Comptrollers, *Bill Analysis of SB 552* (November 24, 2021).
[50] Section 322.245, F.S.
[51] Florida Court Clerks & Comptrollers, *Bill Analysis of SB 552* (November 24, 2021).
[52] FLA. CONST. article V, s. 14(b).

2019-20 county fiscal year, the clerks opened 183,991 civil files without payment of a filing fee to the clerk.[53]

Subject to appropriation, the bill allows a clerk of court to submit to the Justice Administrative Commission a certified request for $40 per case reimbursement for services rendered in certain no-fee civil cases related to mental health and substance abuse. The request for reimbursement must be submitted in the form and manner prescribed by the Justice Administrative Commission. The categories of cases are:

- Habeas corpus filed by an individual detained under the Florida Mental Health Act,[54] pursuant to s. 394.459(8)(d), F.S.
- Determination whether an individual should be subject to an involuntary mental health examination under the Florida Mental Health Act, pursuant to s. 394.463(2)(a), F.S.
- Determination whether an individual should be subject to involuntary mental health placement in a mental health facility under the Florida Mental Health Act, pursuant to s. 394.467(3), F.S.
- Determination whether an individual is a sexually violent predator subject to commitment to a mental health facility for sexually violent predators, pursuant to s. 394.917(3), F.S. and Part V of ch. 394, F.S.
- Determination of whether an individual should be involuntarily assessed and stabilized due to substance abuse, pursuant to s. 397.6814, F.S.[55]

Effective Date

The bill is effective 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 Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[53] Florida Court Clerks & Comptrollers, *Bill Analysis of SB 552* (November 24, 2021). There were 135,672 statutory no-fee cases and 48,319 cases filed by indigents.
[54] The Florida Mental Health Act is also known as the Baker Act.
[55] Chapter 397, F.S., is also known as the Marchman Act.

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: 28.246, 28.35, 40.29, 57.082, and 322.29, F.S.

IX. Additional Information:

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

CS by Appropriations on February 28, 2022:
The committee substitute:

- Removes the section that decreases the share of certain foreclosure filing fees transferred to the General Revenue Fund.
- Removes the section that changes the distribution of a county court filing fee from the General Revenue Fund to the clerks of court.
- Removes the section that requires a judge or traffic infraction hearing officer to impose the minimum financial penalty after finding an offender guilty of a traffic infraction.

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 Boyd

21-00613A-22 2022552__

A bill to be entitled

An act relating to clerks of the circuit court; amending s. 28.241, F.S.; revising the distribution of filing fees in specified trial and appellate proceedings; amending s. 28.246, F.S.; revising the calculations for certain payment plans with clerks of court; providing requirements for down payments for such payment plans; providing that the down payment does not include specified service charges; amending s. 28.35, F.S.; revising the duties of the Clerks of Court Operations Corporation; requiring the corporation to recommend to the Legislature the costs associated with clerk support for newly created county court and circuit court judgeships; amending s. 34.041, F.S.; revising the allocation to the fine and forfeiture fund of filing fees of certain claims filed in county courts; amending s. 57.082, F.S.; authorizing clerks of court to review the property records and motor vehicle title records of applicants for indigent status; requiring clerks to maintain the results of such reviews with the applications and provide those results to the court if an applicant seeks review of the clerk's determination; providing construction; amending s. 318.14, F.S.; revising the minimum civil penalty for noncriminal traffic infractions; amending s. 322.29, F.S.; requiring the Department of Highway Safety and Motor Vehicles to coordinate with the clerks of court to ensure that their technology systems have the capability to

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

21-00613A-22 2022552__

reinstate driver licenses suspended for failure to pay court obligations; amending s. 394.459, F.S.; authorizing clerks of court to seek reimbursement from the Legislature for habeas corpus petitions under specified conditions; providing the method to seek such reimbursement; requiring the corporation to annually develop and submit to the Governor a budget request for such reimbursement, not subject to change by the Justice Administrative Commission, to be transmitted to the Legislature; amending s. 394.463, F.S.; authorizing clerks of court to seek reimbursement from the Legislature for the filing of orders of involuntary examination under specified conditions; providing the method to seek such reimbursement; requiring the corporation to annually develop and submit to the Governor a budget request for such reimbursement, not subject to change by the Justice Administrative Commission, to be transmitted to the Legislature; amending s. 394.467, F.S.; authorizing clerks of court to seek reimbursement from the Legislature for the filing of petitions for involuntary inpatient placement; providing the method to seek such reimbursement; requiring the corporation to annually develop and submit to the Governor a budget request for such reimbursement, not subject to change by the Justice Administrative Commission, to be transmitted to the Legislature; amending s. 394.917, F.S.; authorizing clerks of court to seek reimbursement from the Legislature for costs and fees

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

related to appeals for persons determined to be sexually violent predators; providing the method to seek such reimbursement; requiring the corporation to annually develop and submit to the Governor a budget request for such reimbursement, not subject to change by the Justice Administrative Commission, to be transmitted to the Legislature; amending s. 397.6814, F.S.; authorizing clerks of court to seek reimbursement from the Legislature for petitions for involuntary assessment and stabilization; providing the method to seek such reimbursement; requiring the corporation to annually develop and submit to the Governor a budget request for such reimbursement, not subject to change by the Justice Administrative Commission, to be transmitted to the Legislature; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 28.241, Florida Statutes, is amended to read:

28.241 Filing fees for trial and appellate proceedings.—

(1) Filing fees are due at the time a party files a pleading to initiate a proceeding or files a pleading for relief. Reopen fees are due at the time a party files a pleading to reopen a proceeding if at least 90 days have elapsed since the filing of a final order or final judgment with the clerk. If a fee is not paid upon the filing of the pleading as required under this section, the clerk must ~~shall~~ pursue collection of

the fee pursuant to s. 28.246.

(a)1.a. Except as provided in sub-subparagraph b. and subparagraph 2., the party instituting any civil action, suit, or proceeding in the circuit court shall pay to the clerk of that court a filing fee of up to $395 in all cases in which there are not more than five defendants and an additional filing fee of up to $2.50, from which the clerk shall remit $0.50 to the Department of Revenue for deposit into the General Revenue Fund, for each defendant in excess of five. Of the first $200 in filing fees, $195 must be remitted to the Department of Revenue for deposit into the State Courts Revenue Trust Fund, $4 must be remitted to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services and used to fund the contract with the Florida Clerks of Court Operations Corporation created in s. 28.35, and $1 must be remitted to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services to fund audits of individual clerks' court-related expenditures conducted by the Department of Financial Services. By the 10th of each month, the clerk shall submit that portion of the filing fees collected in the previous month which is in excess of one-twelfth of the clerk's total budget to the Department of Revenue for deposit into the Clerks of the Court Trust Fund.

b. The party instituting any civil action, suit, or proceeding in the circuit court under chapter 39, chapter 61, chapter 741, chapter 742, chapter 747, chapter 752, or chapter 753 shall pay to the clerk of that court a filing fee of up to $295 in all cases in which there are not more than five

defendants and an additional filing fee of up to $2.50 for each defendant in excess of five. Of the first $100 in filing fees, $95 must be remitted to the Department of Revenue for deposit into the State Courts Revenue Trust Fund, $4 must be remitted to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services and used to fund the contract with the Florida Clerks of Court Operations Corporation created in s. 28.35, and $1 must be remitted to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services to fund audits of individual clerks' court-related expenditures conducted by the Department of Financial Services.

c. An additional filing fee of $4 must ~~shall~~ be paid to the clerk. The clerk shall remit $3.50 to the Department of Revenue for deposit into the Court Education Trust Fund and shall remit 50 cents to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services to fund clerk education provided by the Florida Clerks of Court Operations Corporation. An additional filing fee of up to $18 must ~~shall~~ be paid by the party seeking each severance that is granted, from which the clerk shall remit $3 to the Department of Revenue for deposit into the General Revenue Fund. The clerk may impose an additional filing fee of up to $85, from which the clerk shall remit $10 to the Department of Revenue for deposit into the General Revenue Fund, for all proceedings of garnishment, attachment, replevin, and distress. Postal charges incurred by the clerk of the circuit court in making service by certified or registered mail on defendants or other parties must ~~shall~~ be paid by the party at whose instance service is made.

Additional fees, charges, or costs may not be added to the filing fees imposed under this section, except as authorized in this section or by general law.

2.a. Notwithstanding the fees prescribed in subparagraph 1., a party instituting a civil action in circuit court relating to real property or mortgage foreclosure shall pay a graduated filing fee based on the value of the claim.

b. A party shall estimate in writing the amount in controversy of the claim upon filing the action. For purposes of this subparagraph, the value of a mortgage foreclosure action is based upon the principal due on the note secured by the mortgage, plus interest owed on the note and any moneys advanced by the lender for property taxes, insurance, and other advances secured by the mortgage, at the time of filing the foreclosure. The value must ~~shall~~ also include the value of any tax certificates related to the property. In stating the value of a mortgage foreclosure claim, a party shall declare in writing the total value of the claim, as well as the individual elements of the value as prescribed in this sub-subparagraph.

c. In its order providing for the final disposition of the matter, the court shall identify the actual value of the claim. The clerk must ~~shall~~ adjust the filing fee if there is a difference between the estimated amount in controversy and the actual value of the claim and collect any additional filing fee owed or provide a refund of excess filing fee paid.

d. The party shall pay a filing fee of:

(I) Three hundred and ninety-five dollars in all cases in which the value of the claim is $50,000 or less and in which there are not more than five defendants. The party shall pay an

additional filing fee of up to $2.50 for each defendant in excess of five. Of the first $200 in filing fees, $195 must be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund, $4 must be remitted to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services and used to fund the contract with the Florida Clerks of Court Operations Corporation created in s. 28.35, and $1 must be remitted to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services to fund audits of individual clerks' court-related expenditures conducted by the Department of Financial Services;

(II) Nine hundred dollars in all cases in which the value of the claim is more than $50,000 but less than $250,000 and in which there are not more than five defendants. The party shall pay an additional filing fee of up to $2.50 for each defendant in excess of five. Of the first $355 ~~$705~~ in filing fees, $350 ~~$700~~ must be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund, except that the first $1.5 million in such filing fees remitted to the Department of Revenue and deposited into the General Revenue Fund in fiscal year 2018-2019 shall be distributed to the Miami-Dade County Clerk of Court; $4 must be remitted to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services and used to fund the contract with the Florida Clerks of Court Operations Corporation created in s. 28.35; and $1 must be remitted to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services to fund audits of

individual clerks' court-related expenditures conducted by the Department of Financial Services; or

(III) One thousand nine hundred dollars in all cases in which the value of the claim is $250,000 or more and in which there are not more than five defendants. The party shall pay an additional filing fee of up to $2.50 for each defendant in excess of five. Of the first $1,240 ~~$1,705~~ in filing fees, $465 ~~$930~~ must be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund, $770 must be remitted to the Department of Revenue for deposit into the State Courts Revenue Trust Fund, $4 must be remitted to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services to fund the contract with the Florida Clerks of Court Operations Corporation created in s. 28.35, and $1 must be remitted to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services to fund audits of individual clerks' court-related expenditures conducted by the Department of Financial Services.

e. An additional filing fee of $4 shall be paid to the clerk. The clerk shall remit $3.50 to the Department of Revenue for deposit into the Court Education Trust Fund and shall remit 50 cents to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services to fund clerk education provided by the Florida Clerks of Court Operations Corporation. An additional filing fee of up to $18 must ~~shall~~ be paid by the party seeking each severance that is granted. The clerk may impose an additional filing fee of up to $85 for all proceedings of garnishment, attachment,

replevin, and distress. Postal charges incurred by the clerk of the circuit court in making service by certified or registered mail on defendants or other parties must ~~shall~~ be paid by the party at whose instance service is made. Additional fees, charges, or costs may not be added to the filing fees imposed under this section, except as authorized in this section or by general law.

Section 2. Subsection (4) of section 28.246, Florida Statutes, is amended to read:

28.246 Payment of court-related fines or other monetary penalties, fees, charges, and costs; partial payments; distribution of funds.—

(4)(a) Each clerk of the circuit court shall accept partial payments for each case type for court-related fees, service charges, court costs, and fines in accordance with the terms of an established payment plan developed by the clerk.

(b) An individual seeking to defer payment of fees, service charges, court costs, or fines imposed by operation of law or order of the court under any provision of general law shall apply to the clerk for enrollment in a payment plan. The clerk shall enter into a payment plan with an individual who the court determines is indigent for costs. It is the responsibility of an individual who is released from incarceration and has outstanding court obligations to contact the clerk within 30 days after release to pay fees, service charges, court costs, and fines in full, or to apply for enrollment in a payment plan. A monthly payment amount, calculated based upon all fees and all anticipated fees, service charges, court costs, and fines, is presumed to correspond to the person's ability to pay if the

amount does not exceed 2 percent of the person's annual net income, as defined in s. 27.52(1), divided by 12 or $25, whichever is greater. Any amount required by the clerk as down payment to initially establish a payment plan may not be more than 10 percent of the total amount owed or $100, whichever is less. Such amount does not include the imposition of a per month service charge pursuant to s. 28.24(27)(b) or the imposition of a one-time administrative processing service charge each time a payment plan is established pursuant to s. 28.24(27)(c). The clerk shall establish all terms of a payment plan, and the court may review the reasonableness of the payment plan.

Section 3. Paragraph (c) of subsection (2) of section 28.35, Florida Statutes, is amended to read:

28.35 Florida Clerks of Court Operations Corporation.—

(2) The duties of the corporation shall include the following:

(c)1. Recommending to the Legislature changes in the amounts and distribution of the various court-related fines, fees, service charges, and costs established by law to ensure reasonable and adequate funding of the clerks of the court in the performance of their court-related functions.

2. Recommending to the Legislature the total cost associated with clerk support of circuit and county judges statewide, based on a formula approved by the corporation, for consideration each year in which the Legislature authorizes the establishment of new county court judgeships under s. 34.022 or new circuit court judgeships under s. 26.031.

Section 4. Paragraph (c) of subsection (1) of section 34.041, Florida Statutes, is amended to read:

34.041 Filing fees.—

(1)

(c) A party in addition to a party described in paragraph (a) who files a pleading in an original civil action in the county court for affirmative relief by cross-claim, counterclaim, counterpetition, or third-party complaint, or who files a notice of cross-appeal or notice of joinder or motion to intervene as an appellant, cross-appellant, or petitioner, shall pay the clerk of court a fee of $295 if the relief sought by the party under this paragraph exceeds $2,500 but is not more than $15,000 and $395 if the relief sought by the party under this paragraph exceeds $15,000. The clerk shall deposit ~~remit~~ the fee, if the relief sought by the party under this paragraph exceeds $2,500 but is not more than $15,000, ~~to the Department of Revenue for deposit~~ into the fine and forfeiture fund established pursuant to s. 142.01 ~~General Revenue Fund~~. This fee does not apply if the cross-claim, counterclaim, counterpetition, or third-party complaint requires transfer of the case from county to circuit court. However, the party shall pay to the clerk the standard filing fee for the court to which the case is to be transferred.

Section 5. Paragraphs (a) and (d) of subsection (2) of section 57.082, Florida Statutes, are amended to read:

57.082 Determination of civil indigent status.—

(2) DETERMINATION BY THE CLERK.—The clerk of the court shall determine whether an applicant seeking such designation is indigent based upon the information provided in the application and the criteria prescribed in this subsection.

(a)1. An applicant, including an applicant who is a minor

or an adult tax-dependent person, is indigent if the applicant's income is equal to or below 200 percent of the then-current federal poverty guidelines prescribed for the size of the household of the applicant by the United States Department of Health and Human Services.

2. There is a presumption that the applicant is not indigent if the applicant owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in any such property having a net equity value of $2,500 or more, excluding the value of the person's homestead and one vehicle having a net value not exceeding $5,000.

3. Notwithstanding the information provided by the applicant, the clerk may conduct a review of the property records for the county in which the applicant resides and the motor vehicle title records of this state to identify any property interests of the applicant under this paragraph. The clerk may evaluate and consider the results of the review in making a determination under this subsection. If a review is conducted, the clerk must maintain the results of the review in a file with the application and provide the file to the court if an applicant seeks review under subsection (4) of the clerk's determination of indigent status.

(d) The duty of the clerk in determining whether an applicant is indigent is limited to receiving the application and comparing the information provided in the application to the criteria prescribed in this subsection. The determination of indigent status is a ministerial act of the clerk and not a decision ~~may not be~~ based on further investigation, other than the review authorized under this subsection, or the exercise of

independent judgment by the clerk. The clerk may contract with third parties to perform functions assigned to the clerk under this section.

Section 6. Subsection (5) of section 318.14, Florida Statutes, is amended to read:

318.14 Noncriminal traffic infractions; exception; procedures.—

(5) Any person electing to appear before the designated official or who is required so to appear is ~~shall be~~ deemed to have waived his or her right to the civil penalty provisions of s. 318.18. The official, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the official may impose a civil penalty not to exceed $500, but no less than the amount of the civil penalty provisions of s. 318.18, except that in cases involving unlawful speed in a school zone or involving unlawful speed in a construction zone, the civil penalty may not exceed $1,000; or require attendance at a driver improvement school, or both. If the person is required to appear before the designated official pursuant to s. 318.19(1) and is found to have committed the infraction, the designated official must ~~shall~~ impose a civil penalty of $1,000 in addition to any other penalties and the person's driver license shall be suspended for 6 months. If the person is required to appear before the designated official pursuant to s. 318.19(2) and is found to have committed the infraction, the designated official must ~~shall~~ impose a civil penalty of $500 in addition to any other penalties and the person's driver license shall be suspended for 3 months. If the official determines that no

infraction has been committed, no costs or penalties shall be imposed and any costs or penalties that have been paid shall be returned. Moneys received from the mandatory civil penalties imposed pursuant to this subsection upon persons required to appear before a designated official pursuant to s. 318.19(1) or (2) must ~~shall~~ be remitted to the Department of Revenue and deposited into the Department of Health Emergency Medical Services Trust Fund to provide financial support to certified trauma centers to assure the availability and accessibility of trauma services throughout this ~~the~~ state. Funds deposited into the Emergency Medical Services Trust Fund under this section shall be allocated as follows:

(a) Fifty percent shall be allocated equally among all Level I, Level II, and pediatric trauma centers in recognition of readiness costs for maintaining trauma services.

(b) Fifty percent shall be allocated among Level I, Level II, and pediatric trauma centers based on each center's relative volume of trauma cases as calculated using the hospital discharge data collected pursuant to s. 408.061.

Section 7. Subsection (2) of section 322.29, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

322.29 Surrender and return of license.—

(2) Notwithstanding subsection (1), an examination is not required for the return of a license suspended under s. 318.15 or s. 322.245 unless an examination is otherwise required by this chapter. A person applying for the return of a license suspended under s. 318.15 or s. 322.245 shall ~~must~~ present to the department certification from the court that he or she has

complied with all obligations and penalties imposed pursuant to s. 318.15 or, in the case of a suspension pursuant to s. 322.245, that he or she has complied with all directives of the court and the requirements of s. 322.245 and shall pay to the department a nonrefundable service fee of $60, of which $37.50 must ~~shall~~ be deposited into the General Revenue Fund and $22.50 must ~~shall~~ be deposited into the Highway Safety Operating Trust Fund. If reinstated by the clerk of the court or tax collector, $37.50 must ~~shall~~ be retained and $22.50 must ~~shall~~ be remitted to the Department of Revenue for deposit into the Highway Safety Operating Trust Fund. However, the service fee is not required if the person is required to pay a $45 fee or $75 fee under s. 322.21(8).

(3) The department shall coordinate with the clerks of court, through their association, to ensure the capability within their technology systems for clerks of court to reinstate suspended driver licenses for failure to pay court obligations.

Section 8. Paragraph (d) of subsection (8) of section 394.459, Florida Statutes, is amended to read:

394.459 Rights of patients.—

(8) HABEAS CORPUS.—

(d) A ~~No~~ fee may not ~~shall~~ be charged for the filing of a petition under this subsection. However, subject to legislative appropriation, the clerk of the circuit court may, on a quarterly basis, submit to the Justice Administrative Commission a certified request for reimbursement for petitions under this subsection, at the rate of $40 per petition. The request for reimbursement must be submitted in the form and manner prescribed by the Justice Administrative Commission.

Additionally, the Clerks of the Court Operations Corporation shall develop on an annual basis a budget request for the anticipated amount necessary for reimbursement. The request is not subject to change by the Justice Administrative Commission, and it shall be submitted to the Governor for transmittal to the Legislature.

Section 9. Paragraph (a) of subsection (2) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one of the following means:

1. A circuit or county court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on written or oral sworn testimony that includes specific facts that support the findings. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The order of the court shall be made a part of the patient's clinical record. A fee may not be charged for the filing of an order under this subsection. However, subject to legislative appropriation, the clerk of the circuit court may, on a quarterly basis, submit to the Justice Administrative Commission a certified request for

reimbursement for orders under this subsection, at the rate of $40 per order. The request for reimbursement must be submitted in the form and manner prescribed by the Justice Administrative Commission. Additionally, the Clerks of the Court Operations Corporation shall develop on an annual basis a budget request for the anticipated amount necessary for reimbursement. The request is not subject to change by the Justice Administrative Commission, and it shall be submitted to the Governor for transmittal to the Legislature. A facility accepting the patient based on this order must send a copy of the order to the department within 5 working days. The order may be submitted electronically through existing data systems, if available. The order shall be valid only until the person is delivered to the facility or for the period specified in the order itself, whichever comes first. If a time limit is not specified in the order, the order is valid for 7 days after the date that the order was signed.

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, which must be made a part of the patient's clinical record. Any facility accepting the patient based on this report must send a copy of the report to the department within 5 working days.

3. A physician, a physician assistant, a clinical psychologist, a psychiatric nurse, an advanced practice

registered nurse registered under s. 464.0123, a mental health counselor, a marriage and family therapist, or a clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, a law enforcement officer shall take into custody the person named in the certificate and deliver him or her to the appropriate, or nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any facility accepting the patient based on this certificate must send a copy of the certificate to the department within 5 working days. The document may be submitted electronically through existing data systems, if applicable.

When sending the order, report, or certificate to the department, a facility shall, at a minimum, provide information about which action was taken regarding the patient under paragraph (g), which information shall also be made a part of the patient's clinical record.

Section 10. Subsection (3) of section 394.467, Florida Statutes, is amended to read:

394.467 Involuntary inpatient placement.—

(3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.—The administrator of the facility shall file a petition for involuntary inpatient placement in the court in the county where the patient is located. Upon filing, the clerk of the court shall provide copies to the department, the patient, the patient's guardian or representative, and the state attorney and public defender of the judicial circuit in which the patient is located. A fee may not be charged for the filing of a petition under this subsection. However, subject to legislative appropriation, the clerk of the circuit court may, on a quarterly basis, submit to the Justice Administrative Commission a certified request for reimbursement for petitions under this subsection, at the rate of $40 per petition. The request for reimbursement must be submitted in the form and manner prescribed by the Justice Administrative Commission. Additionally, the Clerks of the Court Operations Corporation shall develop on an annual basis a budget request for the anticipated amount necessary for reimbursement. The request is not subject to change by the Justice Administrative Commission, and it shall be submitted to the Governor for transmittal to the Legislature.

Section 11. Subsection (3) of section 394.917, Florida Statutes, is amended to read:

394.917 Determination; commitment procedure; mistrials; housing; counsel and costs in indigent appellate cases.—

(3) The public defender of the circuit in which a person was determined to be a sexually violent predator shall be appointed to represent the person on appeal. That public defender may request the public defender who handles criminal

appeals for the circuit to represent the person on appeal in the manner provided in s. 27.51(4). If the public defender is unable to represent the person on appeal due to a conflict, the court shall appoint other counsel, who shall be compensated at a rate not less than that provided for appointed counsel in criminal cases. Filing fees for indigent appeals under this act are waived. Costs and fees related to such appeals, including the amounts paid for records, transcripts, and compensation of appointed counsel, shall be authorized by the trial court and paid from state funds ~~that are~~ appropriated for such purposes. However, subject to legislative appropriation, the clerk of the circuit court may, on a quarterly basis, submit to the Justice Administrative Commission a certified request for reimbursement for petitions under this subsection, at the rate of $40 per petition. The request for reimbursement must be submitted in the form and manner prescribed by the Justice Administrative Commission. Additionally, the Clerks of the Court Operations Corporation shall develop on an annual basis a budget request for the anticipated amount necessary for reimbursement. The request is not subject to change by the Justice Administrative Commission, and it shall be submitted to the Governor for transmittal to the Legislature.

Section 12. Section 397.6814, Florida Statutes, is amended to read:

397.6814 Involuntary assessment and stabilization; contents of petition.—A petition for involuntary assessment and stabilization must contain the name of the respondent, the name of the applicant or applicants, the relationship between the respondent and the applicant, and the name of the respondent's

attorney, if known, and must state facts to support the need for involuntary assessment and stabilization, including:

(1) The reason for the petitioner's belief that the respondent is substance abuse impaired;

(2) The reason for the petitioner's belief that because of such impairment the respondent has lost the power of self-control with respect to substance abuse; and

(3)(a) The reason the petitioner believes that the respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; or

(b) The reason the petitioner believes that the respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care. If the respondent has refused to submit to an assessment, such refusal must be alleged in the petition.

A fee may not be charged for the filing of a petition pursuant to this section. However, subject to legislative appropriation, the clerk of the circuit court may, on a quarterly basis, submit to the Justice Administrative Commission a certified request for reimbursement for petitions under this section, at the rate of $40 per petition. The request for reimbursement must be submitted in the form and manner prescribed by the Justice Administrative Commission. Additionally, the Clerks of the Court Operations Corporation shall develop on an annual basis a budget request for the anticipated amount necessary for reimbursement. The request is not subject to change by the Justice

Administrative Commission, and it shall be submitted to the Governor for transmittal to the Legislature.

Section 13. This act shall take effect July 1, 2022.

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 15, 2022

Senator Kelli Stargel
404 South Monroe Street
201 The Capitol
Tallahassee, FL 32399

Dear Madam Chair Stargel:

I respectfully request CS/SB 552: Clerks of the Circuit Court, be scheduled for a hearing in the Committee on Appropriations 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: Tim Sadberry
Alicia Weiss

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

APPEARANCE RECORD

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2/28/22	552
Meeting Date	Bill Number or Topic
Appropriations	
Committee	Amendment Barcode (if applicable)

Name Jason Harrell

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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

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S-001 (08/10/2021)

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2/28/22	552
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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)

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2/28/22
Meeting Date

Appropriations
Committee

SB 552
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jorge Chamizo

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Street

Email jorge@flapartners.com

Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

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☑ I am a registered lobbyist, representing:

New Venture Fund

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

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

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 Appropriations

BILL:	CS/CS/CS/SB 578
INTRODUCER:	Appropriations Committee; Community Affairs Committee; Banking and Insurance Committee; and Senator Hooper
SUBJECT:	Hurricane Loss Mitigation Program
DATE:	March 2, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	**Fav/CS**
2.	Hunter	Ryon	CA	**Fav/CS**
3.	Hrdlicka	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 578 extends the Hurricane Loss Mitigation Program (HLMP) within Florida's Division of Emergency Management (DEM) until June 30, 2032. The HLMP funds programs that improve the wind resistance of residences and public hurricane shelters. The HLMP program operations are funded through an annual appropriation of $10 million from the Florida Hurricane Catastrophe Fund to the Division of Emergency Management. The HLMP is set to expire on June 30, 2022.

The bill expands the type of projects eligible for the Shelter Retrofit Program within the HLMP. Currently, the program is to retrofit *existing* facilities that are shelters. Under the bill, the program may fund projects to construct or retrofit facilities.

The bill also transfers administration of the Mobile Home Tie-Down Program from Tallahassee Community College to Gulf Coast State College.

The bill takes effect upon becoming a law.

II. Present Situation:

Hurricane Loss Mitigation Program

In 1999, the Legislature created the HLMP within the DEM for funding programs for improving the wind resistance of residences and mobile homes.[1] The HLMP can provide funding through loans, subsidies, grants, demonstration projects, and direct assistance. It also funds cooperative programs with local governments and the federal government to reduce hurricane losses or the costs of rebuilding after a disaster.

The HLMP is funded by an annual appropriation of $10 million from the Florida Hurricane Catastrophe Fund.[2] Specifically, current law requires the funds to be used as follows:

- $3 million must be directed toward retrofitting existing facilities used as public hurricane shelters. DEM must prioritize the use of these funds for projects included in the annual Shelter Retrofit Report.[3]
- $7 million must be directed toward programs that improve the wind resistance of residences and mobile homes, including loans, subsidies, grants, demonstration projects, and direct assistance; educating persons concerning the Florida Building Code; and other efforts to prevent or reduce losses or reduce the cost of building after a disaster.[4]

Of the $7 million allocated to improve the wind resistance of residences and mobile homes, provide education regarding Florida Building Code cooperative programs, and reduce the cost of rebuilding after a disaster:

- 50 percent ($3.5 million) is directed to grant funding for governmental entities, nonprofit organizations, and qualified for-profit organizations to improve the resiliency of residential, community, and government structures within their communities.
- 40 percent ($2.8 million) must be directed to the Manufactured Housing and Mobile Home Mitigation and Enhancement Program (Mobile Home Tie-Down Program) to mitigate future losses for mobile homes and inspect and improve tie-downs for mobile homes. The program is administered by Tallahassee Community College (TCC).[5]
- 10 percent ($700,000) must be directed to the Florida International University (FIU) for hurricane research.[6]

On January 1 of each year, DEM submits an annual report and accounting of activities under the HLMP and an evaluation of the activities.[7] The report must be submitted to the Speaker of the House of Representatives, the President of the Senate, and the Majority and Minority Leaders of the House of Representatives and the Senate. The Office of Insurance Regulation (OIR) must review the report and make recommendations to the insurance industry as deemed appropriate.[8]

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[1] Chapter 99-305, L.O.F.
[2] Section 215.559(1), F.S. *See* ch. 2020-111, s. 6., Specific Appropriations 2639 and 2446, Laws of Fla.
[3] Section 215.559(1)(b), F.S.
[4] Section 215.559(1)(a), F.S.
[5] Section 215.559(2), F.S.
[6] Section 215.559(3), F.S.
[7] Hurricane Loss Mitigation Reports reside on the DEM website: https://www.floridadisaster.org/dem/mitigation/hurricane-loss-mitigation-program/ (last accessed February 22, 2022).
[8] Section 215.559(6), F.S.

The HLMP expires on June 30, 2022.[9]

Shelter Retrofit Program

Of the funds dedicated to the Shelter Retrofit Program, the DEM must prioritize the use of the funds for projects included in the annual Shelter Retrofit Report.[10] The DEM must similarly prioritize these funds to projects in regional planning council regions with shelter deficits and projects that maximize the use of state funds.[11]

In Fiscal Year 2021-2021, the DEM reports that 4 new shelter retrofit agreements were executed and 9 projects were completed. At the end of the fiscal year, 19 projects were active in communities across the state; of the total, 15 projects were opened in previous fiscal years. The funds in the program that have not been expended in previous fiscal years are made available in following years for new projects.[12]

Hurricane Loss Mitigation Program Retrofit Grant

Governmental entities, nonprofit organizations, and qualified for-profit organizations can submit a proposal for the HLMP Retrofit Grant. Each submitted proposal is reviewed through a cost-benefit analysis to ensure that the recommended mitigation retrofits remain cost effective. A review panel selects eligible applicants based on priority, need, benefit, and alignment with local mitigation strategy projects.[13]

In Fiscal Year 2020-2021, the DEM reports that 14 new wind mitigation retrofits to homes were awarded (no grants were awarded in the year for other mitigation strategies, such as stormwater drainage, flood mitigation, and public wind retrofit activities). Due to projects being halted and supply chain bottlenecks for construction equipment and materials because of COVID-19 impacts, the projects were granted an extension for completion. Typically projects must be complete at the end of the fiscal year; however, the 2020-2021 fiscal year projects were granted an extension through December 31, 2021. For Fiscal Year 2021-2022, 5 new wind mitigation retrofits to homes were awarded and 6 new grants were awarded for other mitigation strategies. Similar to the Shelter Retrofit Grant, funds in the program that have not been expended in previous fiscal years are made available in following years for new projects.[14]

Mobile Home Tie-Down Program

The purpose of the Mobile Home Tie-Down Program is to mitigate future losses and inspect and improve tie-downs for mobile homes built before 1999 to meet the current standards.[15] Mitigation under the program includes addressing problems associated with weakened trusses, studs, and other structural components caused by wood rot or termite damage; site-built

[9] Section 215.559(7), F.S.
[10] The Shelter Retrofit Report is prepared annually and submitted to the Governor and the Legislature. *See* s. 252.385, F.S.
[11] Section 215.559(1)(b), F.S.
[12] Division of Emergency Management, *Florida Hurricane Loss Mitigation Program: 2021 Annual Report* (January 1, 2022), https://www.floridadisaster.org/dem/mitigation/hurricane-loss-mitigation-program/ (last visited February 22, 2022).
[13] *Id*.
[14] *Id*.
[15] The standards are established in Rules 15C-1.0101 through 15C-1.0109, F.A.C.

additions, such as porches or carports; tie-down systems; and any additional issues deemed appropriate by TCC, the Federation of Manufactured Home Owners of Florida, the Florida Manufactured Housing Association, and the Department of Highway Safety and Motor Vehicles (DHSMV).[16]

The Mobile Home Tie-Down Program is funded by a direct $2.8 million allocation under the HLMP to TCC, which serves as program administrator.[17] The Mobile Home Tie-Down Program does not, and mobile homes are ineligible to, receive federal mitigation funds under Federal Emergency Management Agency (FEMA) Pre-Disaster Mitigation Grant, Building Resilient Infrastructure and Communities, or Hazard Mitigation Grant programs.

Since 1999, the Mobile Home Tie-Down Program has served over 40,000 mobile homes in over 278 mobile home communities.[18] Activities during the 2020-2021 fiscal year included only 686 completed mobile homes in 9 mobile home communities.[19] COVID-19 travel, inspection, and community access restrictions affected participation and prevented the Mobile Home Tie-Down Program from expensing 100% of the allocated funds.[20]

As of December 2021, the Mobile Home Tie-Down Program reported a current waiting list of 115 outstanding parks and 39 individual applications – the waiting list currently exceeds 5 years. TCC is not accepting new applications until the waiting list shortens.[21]

Hurricane Research

FIU conducts research to support hurricane loss reduction devices and techniques as identified by the International Hurricane Research Center. The center's mission is to reduce hurricane damage and loss of life through more effective mitigation. The center has four laboratories focused on different aspects of hurricane impact: Laboratory for Coastal Research; Laboratory for Social and Behavioral Research; Laboratory for Insurance, Financial, and Economic Research; and Laboratory for Wind Engineering Research.[22]

For Fiscal Year 2020-2021, the International Hurricane Research Center is researching several topics, including experimental and analytical assessments of effects of leakage around sliding glass door systems; investigation to codify wind pressure distribution of irregular shaped homes; continued development of an integrated storm tide and freshwater flooding model; and education and outreach programs to convey the benefits of various hurricane loss mitigation devices and techniques.[23]

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[16] Section 215.559(2)(b)1., F.S.
[17] Section 215.559(2)(a), F.S.
[18] Florida Housing Coalition, *Hurricane Member Update Webinar* (August 28, 2020), https://www.flhousing.org/wp-content/uploads/2020/09/FHC-Hurricane-Member-Update-8-28-20.pdf (last visited February 22, 2022).
[19] Division of Emergency Management, *Florida Hurricane Loss Mitigation Program: 2020 Annual Report* (January 1, 2021), https://www.floridadisaster.org/dem/mitigation/hurricane-loss-mitigation-program/ (last visited February 22, 2022).
[20] *Id*.
[21] Tallahassee Community College, *Mobile Home Tie-Down Program*, https://www.tcc.fl.edu/about/college/administrative-services/sponsored-programs/mobile-home-tie-down-program/ (last visited February 22, 2022).
[22] Florida International University, International Hurricane Research Center, *About* and *History*, http://www.ihrc.fiu.edu/about/ (last visited February 22, 2022).
[23] Division of Emergency Management, *Florida Hurricane Loss Mitigation Program: 2021 Annual Report*.

Florida Hurricane Catastrophe Fund (FHCF)

The FHCF is a tax-exempt fund created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers.[24] The FHCF is administered by the State Board of Administration and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent) of hurricane losses above the insurer's retention (deductible).[25] The FHCF provides insurers an additional source of reinsurance that is less expensive than what is available in the private market, enabling insurers to generally write more residential property insurance in the state than would otherwise be written. Because of the low cost of coverage from the FHCF, the fund acts to lower residential property insurance premiums for consumers.

When the moneys in the FHCF are or will be insufficient to cover losses, the law authorizes the FHCF to issue revenue bonds funded by emergency assessments on all lines of insurance except medical malpractice and workers compensation.[26] Emergency assessments may be levied up to 6 percent of the premium for losses attributable to any one contract year and up to 10 percent of the premium for aggregate losses from multiple years. The FHCF's broad-based assessment authority is one reason the FHCF was able to obtain an exemption from federal taxation from the Internal Revenue Service as an integral part of state government.[27]

The private letter ruling "includes a requirement that a certain amount of FHCF funds be devoted to hurricane mitigation purposes."[28] "The allocation of a portion of FHCF funds to the broad public purpose of hurricane loss mitigation was one of the factors that the US Internal Revenue Service relied on in determining the tax-exempt status of the FHCF."[29]

Section 215.555(7)(c), F.S., specifies that the appropriation is for the purpose of providing funding for local governments, state agencies, public and private educational institutions, and nonprofit organizations to:

- Support programs intended to improve hurricane preparedness;
- Reduce potential losses in the event of a hurricane;
- Provide research into means to reduce such losses;
- Educate or inform the public as to means to reduce hurricane losses;
- Assist the public in determining the appropriateness of particular upgrades to structures or in the financing of such upgrades; or
- Protect local infrastructure from potential damage from a hurricane.

[24] Section 215.555(1)(f), F.S. *See also* ch. 93-409, Laws of Fla, relating to creation of the fund.
[25] Section 215.555(2)(e), F.S.
[26] Section 215.555(6)(b), F.S.
[27] The U.S. Internal Revenue Service has, by a Private Letter Ruling, authorized the FHCF to issue tax-exempt bonds. The initial ruling was granted on March 27, 1998, for 5 years until June 30, 2003. On May 28, 2008, the Internal Revenue Service issued a private letter ruling holding that the prior exemption, which was to expire on June 30, 2008, could continue to be relied upon on a permanent basis (on file with the Committee on Banking and Insurance).
[28] *Id*.
[29] State Board of Administration, Florida Hurricane Catastrophe Fund, *2020 Annual Report*, https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20210614_2020_FHCFAnnualReport.pdf?ver=2021-06-14-123243-403 (last visited February 22, 2022).

Statute requires an annual appropriation of at least $10 million, but no more than 35 percent of yearly investment income. Annually $13.5 million is appropriated from the FHCF to DEM, including a recurring $3.5 million for the statewide emergency and mass notification system (Alert System) and a recurring $10 million for the HLMP as discussed above.

III. Effect of Proposed Changes:

The bill extends until June 30, 2032, the HLMP within the DEM. The HLMP funds programs that improve the wind resistance of residences and public hurricane shelters. Without the bill, the HLMP is set to expire on June 30, 2022.

The bill expands the type of projects eligible for the Shelter Retrofit Program. Currently, the program is to retrofit *existing* facilities that are shelters. Under the bill, the program may fund projects to construct or retrofit facilities.

The bill transfers administration of the Mobile Home Tie-Down Program from TCC to Gulf Coast State College. The bill provides that effective July 1, 2022, all powers, duties, and unexpended appropriations at TCC related to the program are transferred to Gulf Coast State College.

The bill also removes an obsolete reference in s. 215.559(2)(b)3., F.S.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate with respect to insurance premiums. A reduction in wind loss attributable to retrofitted tie-downs may be offset by wind loss attributable to carports and sunrooms not constructed to code, which FEMA has concluded as being the primary causes of damage to mobile homes from a wind event.[30]

Nonprofit organizations, qualified for-profit organizations, and property owners benefit from the extension of the mitigation retrofit grant program, which provides for hazard mitigation retrofitting to residential and commercial properties.

C. Government Sector Impact:

The Legislature needs to ensure the continuation of appropriations of at least $10 million from the Cat Fund are made to hurricane mitigation programs as provided under s. 215.555(7)(c), F.S., to maintain the tax exempt status of the Cat Fund. The extension of the HLMP under the bill provides continued direction for use of these funds. Local housing authorities, local governments, Gulf Coast State College, and FIU benefit from the extension of the shelter retrofit program, the mitigation retrofit grant program, the Mobile Home Tie-Down Program, and the hurricane research at FIU.

All unexpended balances of appropriations, allocations, or other funds held by TCC for the Mobile Home Tie-Down program are transferred to Gulf Coast State College effective July 1, 2022.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 215.559 of the Florida Statutes.

[30] *See* Federal Emergency Management Agency, Mitigation Section, Technical Services Branch, *Third Party Analysis of Manufactured Home Retrofit Tie Downs* (June 2005) at p.3. On file with the Senate Committee on Banking and Insurance.

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 Appropriations on February 28, 2022:
The committee substitute transfers administration of the Mobile Home Tie-Down Program from TCC to Gulf Coast State College.

CS/CS by Community Affairs on February 2, 2022:
The committee substitute removes the provision which annually appropriates $2 million from Cat Fund investment income to the University of South Florida School of Risk Management and Insurance for the purpose of researching Florida's property insurance market.

CS by Banking and Insurance on January 12, 2022:
The committee substitute:

- Expands the list of projects which are eligible to receive funds allocated under the HLMP for retrofitting existing public hurricane facilities to include construction of new public hurricane facilities.
- Creates a recurring annual appropriation of $2 million from Cat Fund investment income to the University of South Florida School of Risk Management and Insurance for the purposes of researching Florida's property insurance market.

B. Amendments:

None.

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

949840

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2022	.	
	.	
	.	
	.	

The Committee on Appropriations (Hooper) recommended the following:

Senate Amendment (with title amendment)

Delete lines 45 - 90
and insert:
by the Gulf Coast State College ~~Tallahassee Community College~~, the Federation of Manufactured Home Owners of Florida, Inc., the Florida Manufactured Housing Association, and the Department of Highway Safety and Motor Vehicles. The program shall include an education and outreach component to ensure that owners of manufactured and mobile homes are aware of the benefits of

949840

participation.

2. The program shall be a grant program that ensures that entire manufactured home communities and mobile home parks may be improved wherever practicable. The moneys appropriated for this program shall be distributed directly to the Gulf Coast State College ~~Tallahassee Community College~~ for the uses set forth under this subsection.

3. Upon evidence of completion of the program, the Citizens Property Insurance Corporation shall grant, on a pro rata basis, actuarially reasonable discounts, credits, or other rate differentials or appropriate reductions in deductibles for the properties of owners of manufactured homes or mobile homes on which fixtures or construction techniques that have been demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. The discount on the premium must be applied to subsequent renewal premium amounts. Premiums of the Citizens Property Insurance Corporation must reflect the location of the home and the fact that the home has been installed in compliance with building codes adopted after Hurricane Andrew. ~~Rates resulting from the completion of the Manufactured Housing and Mobile Home Mitigation and Enhancement Program are not considered competitive rates for the purposes of s. 627.351(6)(d)1. and 2.~~

4. On or before January 1 of each year, the Gulf Coast State College ~~Tallahassee Community College~~ shall provide a report of activities under this subsection to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must set forth the number of homes that have taken advantage of the program, the types of



enhancements and improvements made to the manufactured or mobile homes and attachments to such homes, and whether there has been an increase in availability of insurance products to owners of manufactured or mobile homes.

The Gulf Coast State College ~~Tallahassee Community College~~ shall develop the programs set forth in this subsection in consultation with the Federation of Manufactured Home Owners of Florida, Inc., the Florida Manufactured Housing Association, and the Department of Highway Safety and Motor Vehicles. The moneys appropriated for the programs set forth in this subsection shall be distributed directly to the Gulf Coast State College ~~Tallahassee Community College~~ to be used as set forth in this subsection.

(7) This section is repealed June 30, 2032 ~~2022~~.

Section 2. Effective July 1, 2022, all powers, duties, functions, records, property, pending issues, and unexpended balances of appropriations, allocations, and other funds in Tallahassee Community College related to the programs authorized under s. 215.559(2), Florida Statutes, are transferred to the Gulf Coast State College.

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

And the title is amended as follows:

Delete lines 7 - 10

and insert:

annual report; revising provisions to require the Manufactured Housing and Mobile Home Mitigation and Enhancement Program to be operated by Gulf Coast State



College; deleting construction related to Citizens Property Insurance Corporation coverage rates; delaying the future repeal of the Hurricane Loss Mitigation Program; directing the transfer of specified powers, duties, functions, records, property, issues, and funds relating to the Manufactured Housing and Mobile Home Mitigation and Enhancement Program from Tallahassee Community College to the Gulf Coast State College; providing an effective date.

By the Committees on Community Affairs; and Banking and Insurance; and Senator Hooper

578-02644-22 2022578c2

A bill to be entitled

An act relating to the Hurricane Loss Mitigation Program; amending s. 215.559, F.S.; revising the use of certain funds from the Florida Hurricane Catastrophe Fund to also include construction of certain facilities; revising the title of a certain annual report; deleting construction relating to Citizens Property Insurance Corporation coverage rates; delaying the future repeal of the Hurricane Loss Mitigation Program; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1), paragraph (b) of subsection (2), and subsection (7) of section 215.559, Florida Statutes, are amended to read:

215.559 Hurricane Loss Mitigation Program.—A Hurricane Loss Mitigation Program is established in the Division of Emergency Management.

(1) The Legislature shall annually appropriate $10 million of the moneys authorized for appropriation under s. 215.555(7)(c) from the Florida Hurricane Catastrophe Fund to the division for the purposes set forth in this section. Of the amount:

(b) Three million dollars in funds shall be used to construct or retrofit ~~existing~~ facilities used as public hurricane shelters. Each year the division shall prioritize the use of these funds for projects included in the annual report of the Shelter Development ~~Retrofit~~ Report prepared in accordance

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

578-02644-22 2022578c2

with s. 252.385(3). The division must give funding priority to projects in regional planning council regions that have shelter deficits and to projects that maximize the use of state funds.

(2)

(b)1. The Manufactured Housing and Mobile Home Mitigation and Enhancement Program is established. The program shall require the mitigation of damage to or the enhancement of homes for the areas of concern raised by the Department of Highway Safety and Motor Vehicles in the 2004-2005 Hurricane Reports on the effects of the 2004 and 2005 hurricanes on manufactured and mobile homes in this state. The mitigation or enhancement must include, but need not be limited to, problems associated with weakened trusses, studs, and other structural components caused by wood rot or termite damage; site-built additions; or tie-down systems and may also address any other issues deemed appropriate by Tallahassee Community College, the Federation of Manufactured Home Owners of Florida, Inc., the Florida Manufactured Housing Association, and the Department of Highway Safety and Motor Vehicles. The program shall include an education and outreach component to ensure that owners of manufactured and mobile homes are aware of the benefits of participation.

2. The program shall be a grant program that ensures that entire manufactured home communities and mobile home parks may be improved wherever practicable. The moneys appropriated for this program shall be distributed directly to Tallahassee Community College for the uses set forth under this subsection.

3. Upon evidence of completion of the program, the Citizens Property Insurance Corporation shall grant, on a pro rata basis, actuarially reasonable discounts, credits, or other rate

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

differentials or appropriate reductions in deductibles for the properties of owners of manufactured homes or mobile homes on which fixtures or construction techniques that have been demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. The discount on the premium must be applied to subsequent renewal premium amounts. Premiums of the Citizens Property Insurance Corporation must reflect the location of the home and the fact that the home has been installed in compliance with building codes adopted after Hurricane Andrew. ~~Rates resulting from the completion of the Manufactured Housing and Mobile Home Mitigation and Enhancement Program are not considered competitive rates for the purposes of s. 627.351(6)(d)1. and 2.~~

4. On or before January 1 of each year, Tallahassee Community College shall provide a report of activities under this subsection to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must set forth the number of homes that have taken advantage of the program, the types of enhancements and improvements made to the manufactured or mobile homes and attachments to such homes, and whether there has been an increase in availability of insurance products to owners of manufactured or mobile homes.

Tallahassee Community College shall develop the programs set forth in this subsection in consultation with the Federation of Manufactured Home Owners of Florida, Inc., the Florida Manufactured Housing Association, and the Department of Highway Safety and Motor Vehicles. The moneys appropriated for the programs set forth in this subsection shall be distributed

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

directly to Tallahassee Community College to be used as set forth in this subsection.

(7) This section is repealed June 30, 2032 ~~2022~~.

Section 2. 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 Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 2, 2022

I respectfully request that **Senate Bill # 578**, relating to Hurricane Impact Programs, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Ed Hooper
Florida Senate, District 16

File signed original with committee office

S-020 (03/2004)

The Florida Senate

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

2/28/22
Meeting Date

Approp
Committee

578
Bill Number or Topic

as amended
Amendment Barcode (if applicable)

Name Ed Chase

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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:
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

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

Feb 28, 2022
Meeting Date

Appropriations
Committee

CS/CS/SB 578
Bill Number or Topic

Amendment Barcode (if applicable)

Name Nancy Stewart

Phone 850.385.7805

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Street

Tallahassee FL 32312
City State Zip

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

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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 Appropriations

BILL:	PCS/CS/SB 752 (529550)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommitte on Criminal and Civil Justice); Criminal Justice Committee; and Senator Gainer and others
SUBJECT:	Probationary or Supervision Services for Misdemeanor Offenders
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Jones	CJ	**Fav/CS**
2.	Atchley	Harkness	ACJ	**Recommend: Fav/CS**
3.	Atchley	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 752 removes a statutory prohibition on a private entity providing probationary or supervision services to misdemeanor offenders who are sentenced by a circuit court. Under current law, a private or a public entity may only provide probation services to offenders sentenced by a county court.

Currently, the Department of Corrections (DOC) must supervise felony and misdemeanor offenders who are sentenced to or placed on probation or other supervision by a circuit court. The bill authorizes the DOC to supervise misdemeanor offenders when such supervision is ordered by the circuit court, but retains the requirement that the DOC supervise felony offenders.

The bill transfers the authority to approve a contract with a private entity to provide supervision services for misdemeanor offenders from the county court judge or administrative judge to the chief judge of the circuit.

The bill authorizes probationers or offenders in community control to fulfill the reporting requirements of their terms and conditions of probation by reporting to their probation office *remotely* if approved by the relevant probation officer, county probation authority or entity, or the DOC and if the court has not excluded remote reporting in his or her order of probation. The bill requires the probation officer to schedule meetings required as a condition of probation at

times and locations that accommodate work schedules, family caregiving obligations, and medical care of the probationer, unless it poses a threat to public safety.

The bill requires the DOC to implement the graduated incentives system in a manner that encourages stable employment in addition to promoting compliance with terms of supervision and prioritizing the highest level of supervision for probationers and offenders presenting the greatest risk of recidivism. The DOC must incentivize educational achievement by awarding a 60 day reduction in the term of supervision for a probationer or offender in community control who completes an educational advancement activity, such as obtaining a high school diploma, a high school equivalency degree, an academic degree, or a vocational certificate, during his or her term of supervision. A probationer or offender in community control who commits a subsequent violation of probation may forfeit any reduction awarded for completing an educational advancement activity, at the discretion of his or her probation officer.

The bill will have an indeterminate fiscal impact on the DOC. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

II. Present Situation:

Court Jurisdiction

Florida has a two-tiered trial court system that consists of circuit courts and county courts. The state Constitution requires a circuit court to be established in each judicial circuit established by the Legislature, of which there are twenty.[1]

Circuit courts have exclusive original jurisdiction over:
- All actions at law not cognizable by the county courts;
- Proceedings related to settling estates of decedents and minors, granting testamentary letters, guardianship, involuntary hospitalization, the determination of incompetency, and other jurisdiction usually pertaining to probate courts;
- All cases in equity including cases related to juveniles, except traffic offenses as provided in chs. 316 and 985, F.S.;
- All felonies and all misdemeanors arising out of the same circumstances as a felony which is also charged;
- All cases involving the legality of any tax assessment or toll or denial of refund, except as provided in s. 72.011, F.S.;
- Ejectment actions; and
- All actions involving the title and boundaries of real property.[2]

[1] Art. V, ss. 1 and 5, FLA. CONST. A list of judicial circuits can be found at https://www.flcourts.org/Florida-Courts/Trial-Courts-Circuit (last visited February 17, 2022).
[2] Section 26.012(2), F.S.

The state Constitution also establishes a county court in each county.[3] County courts have original jurisdiction over:

- Misdemeanor cases not cognizable by the circuit courts;
- Violations of municipal and county ordinances; and
- Actions at law, except those within the exclusive jurisdiction of the circuit courts, in which the matter in controversy does not exceed $30,000, exclusive of interest, costs, and attorney fees.[4]

Generally, felony offenses are adjudicated by the circuit court and misdemeanor offenses are adjudicated by the county court. However, circuit courts routinely adjudicate misdemeanor charges when:

- A misdemeanor charge arises out of the same circumstances as a felony; or
- A felony charge is reduced or dismissed in circuit court and the court retains jurisdiction over the remaining misdemeanor charge.

Probation and Community Control

Probation is a form of community supervision requiring specified contacts with probation officers and compliance with certain terms and conditions.[5] The court determines the terms and conditions of probation.[6] Section 948.03, F.S., provides standard conditions of probation; however, a court may sentence an offender to special terms and conditions at the time of sentencing, such as substance abuse treatment. Additionally, a probationer is required to comply with several standard conditions of probation which may include:

- Reporting to the probation officer as directed.
- Permitting the probation officer to visit the probationer at his or her home.
- Working faithfully at suitable employment, when possible.
- Residing at a specified place.
- Living without violating the law.
- Paying restitution to any aggrieved party for the damage or loss caused by a probationer's offense.
- Being prohibited from possessing, carrying, or owning a firearm or weapon, without the probation officer's consent.
- Being prohibited from using intoxicants to excess or possessing any drugs or narcotics.[7]

Community control is a form of intensive individualized supervision of an offender who remains in the community, but whose freedom is restricted within the home, community, or noninstitutional residential placement and includes specific sanctions and monitoring by probation officers with restricted caseloads.[8] In addition to the standard conditions which apply

[3] Art. V, s. 6, FLA. CONST.
[4] Section 34.01(1), F.S. The jurisdictional limit for civil actions was $15,000 prior to January 1, 2020, at which time the jurisdictional limit was raised to $30,000. The jurisdictional limit is scheduled to rise to $50,000 on January 1, 2023. The law provides a process by which the jurisdictional limit is to be reviewed and adjusted every 10 years beginning July 1, 2030; however it may not be lower than $50,000.
[5] Section 948.01(8), F.S.
[6] Section 948.03, F.S.
[7] Section 948.03, F.S.
[8] Section 948.001(3), F.S.

to normal probationers, an offender on community control must: be confined to an agreed-upon residence during any hours he or she is away from work or public service activities; complete mandatory community services; and be supervised by electronic monitoring.[9]

Education and Learning as a Condition of Probation or Community Control

Section 948.037, F.S., authorizes a court to require an offender who has not obtained a high school diploma or a high school equivalency diploma or who lacks basic or functional literacy skills, to make a good faith effort toward attaining literacy skills or a high school equivalency diploma as a condition of probation or community control.[10] A court may not revoke probation or community control because of an offender's inability to achieve literacy skills or a diploma, but may revoke probation or community control if the offender fails to make a good faith effort towards achieving such skills or diploma.[11] A court may grant a probationer or offender in community control early termination of supervision upon his or her successful completion of an approved program.

Reduction or Termination of Term of Probation or Community Control

Generally, once a probationer completes the period of probation, he or she is released from probation and the court no longer retains jurisdiction to sentence the offender for the offense for which probation was allowed. However, if a probationer has performed satisfactorily, has not been found in violation of any terms or conditions of supervision, and has met all financial conditions imposed by the court, including fines, court costs, and restitution, his or her probation officer may recommend early termination of probation to the court at any time before the scheduled termination date.[12]

Early Termination or Conversion to Administrative Probation

Under s. 948.06(4), F.S., upon the probationer's motion,[13] the court shall order early termination of supervision or convert the supervisory term to administrative probation[14] if all of the following conditions are met:

- The probationer has completed at least half of the term of probation to which he or she was sentenced.
- The probationer has successfully completed all other conditions of probation.
- The court has not found the probationer in violation of probation pursuant to a filed violation of probation affidavit at any point during the current supervisory term.
- The parties did not specifically exclude the possibility of early termination or conversion to administrative probation as part of a negotiated sentence.
- The probationer does not qualify as a violent felony offender of special concern under s. 948.06(8)(b), F.S.[15]

[9] Section 948.101, F.S.
[10] Section 948.037, F.S.
[11] *Id*. "Good faith effort" means the offender is enrolled in a program of instruction and is attending and making satisfactory progress toward completion of the requirements.
[12] Section 948.04, F.S.
[13] This provision only applies to a defendant sentenced on or after October 1, 2019. See s. 948.04(4), F.S.
[14] "Administrative probation" is a form of no contact, nonreporting supervision. A court may order administrative probation, or the DOC may transfer an offender to administrative probation under specified circumstances. Section 948.001(1), F.S.
[15] Section 948.04(4), F.S.

However, a court may decline to early terminate the probationary term or convert the term to administrative probation if it makes written findings that continued reporting probation is necessary to protect the community or the interest of justice.[16] Additionally, an offender on community control is not eligible to motion for mandatory early termination or conversion to administrative probation under s. 948.04, F.S.[17]

Graduated Incentives

Section 948.05(2), F.S., requires the DOC to implement a system of graduated incentives to promote compliance with the terms of supervision and prioritize the highest levels of supervision for probationers or offenders presenting the greatest risk of recidivism. As part of the graduated incentives system, the department may offer, without leave of the court, the following incentives to a compliant probationer or offender in community control:

- Up to 25 percent reduction of required community service hours;
- Waiver of supervision fees;
- Reduction in frequency of reporting;
- Permission to report by mail or telephone; or
- Transfer of an eligible offender to administration probation as authorized under s. 948.013, F.S.[18]

The DOC may also incentivize positive behavior and compliance by recommending to the court to modify a probationer's terms of supervision, which may include recommending:

- Permission to travel;
- Reduction of supervision type;
- Modification or cessation of curfew;
- Reduction or cessation of substance abuse testing; or
- Early termination of supervision.[19]

A probationer or offender in community control may forfeit any previously earned probation incentive if he or she commits a subsequent violation of probation.[20] Graduated incentives are currently offered at the discretion of the probation officer or court and a probationer or offender in community control is not entitled to any such graduated incentive.

Educational Attainment Gain Time Award for Inmates

Section 944.275, F.S., authorizes the DOC to grant deductions from prison sentences in the form of gain time to encourage satisfactory behavior and to provide incentives for inmates to participate in productive activities. Specifically, s. 944.275(4)(d), F.S., authorizes the DOC to award an inmate who completes a high school equivalency diploma or vocational certificate a one-time award of 60 days of incentive gain time.[21]

[16] Section 948.04(5), F.S.
[17] Section 948.04(6), F.S.
[18] Section 948.05(2)(a), F.S.
[19] Section 948.05(2)(b), F.S.
[20] Section 948.05(2)(c), F.S.
[21] Section 944.275(4)(d), F.S.

Probationers or offenders in community control are not entitled to a similar reduction of supervision term under the graduated incentives system or any other statutory authority.

Sentence of Probation

County Court Probation

A defendant who is placed on probation after being found guilty of a misdemeanor may not be sentenced to a term of supervision exceeding six months, unless otherwise ordered by the court.[22] Any person sentenced to misdemeanor probation by the county court must pay at least $40 per month, as determined by the court, to the court approved public or private entity providing misdemeanor supervision.[23]

A private entity or public entity, including licensed substance abuse education and intervention programs, may provide probation services to offenders sentenced by a county court, when such services are provided under the supervision of the board of county commissioners or the court.[24] For example, the Salvation Army provides supervision services including drug testing, job assistance, community service placement, and substance abuse assistance and rehabilitation to misdemeanor probationers in multiple Florida counties.[25] Professional Probation Services and its affiliated company, Judicial Correction Services, provide services in a number of Florida counties.[26]

Any private entity providing supervision services for misdemeanor probationers must contract with the county in which the services will be provided.[27] In a county with a population of less than 70,000, the county court judge, or in a county with more than one county court judge, the administrative judge of the county court must approve the contract. The terms of the contract must include, but are not limited to:

- The extent of the services to be rendered by the entity providing supervision and rehabilitation.
- Staff qualifications and criminal record checks of staff.
- Staffing levels.
- The number of face-to-face contacts with probationers.
- Procedures for handling the collection of probationer fees and restitution.
- Procedures for handling indigent probationers that ensure placement irrespective of ability to pay.
- Circumstances under which revocation of a probationer's supervision may be recommended.
- Reporting and record keeping requirements.
- Default and contract termination procedures.

[22] Section 948.15(1), F.S.
[23] Section 948.09(1)(b), F.S.
[24] Section 948.15(2), F.S.
[25] Such misdemeanor probation services are provided in Citrus, Dixie, Duval, Gilchrist, Highlands, and Marion counties. The Salvation Army, *Correctional Services*, *available at* https://salvationarmyflorida.org/correctional-services/ (last visited February 17, 2022).
[26] *See* Professional Probation Services, *Our Companies*, *available at* https://ppsfamily.com/our-companies/ (last visited February 17, 2022).
[27] Section 948.15(3), F.S.

- Procedures that aid probationers with job assistance.
- Procedures for accessing criminal history records of probationers.[28]

On a quarterly basis, the entity must report to the chief judge a summary of the number of probationers supervised by the private entity, payment of the required contribution under supervision or rehabilitation, and the number of probationers for whom supervision will be terminated. The entity must permit its records to be inspected upon the request of the county, the court, the Auditor General, the Office of Program Policy Analysis and Government Accountability, or any agent thereof.[29]

A private entity that charges a fee for providing supervision services to probationers must register with the board of county commissioners in the county in which the entity offers services. The entity must provide specified information for each program it operates, including:

- The length of time the program has been operating in the county;
- A list of the staff and a summary of their qualifications;
- A summary of the types of services that are offered under the program; and
- The fees the entity charges for court-ordered services and any procedures for indigent probationers.[30]

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- A private entity, including a licensed substance abuse education and intervention program, providing misdemeanor supervision services must comply with all other applicable provisions of law.[31]

Circuit Court Probation

If the circuit court places a defendant on probation for a felony, the DOC must supervise the defendant.[32] A defendant who is placed on probation for a misdemeanor may not be placed under the DOC's supervision unless the circuit court was the court of original jurisdiction.[33] The DOC currently supervises more than 164,000 offenders on probation or in community control throughout Florida.[34]

Any person placed on probation under ch. 948, F.S., must pay the DOC supervision fees equal to the total month or portion of a month of supervision times the court-ordered amount, but such amount cannot exceed the actual per diem cost of supervision.[35] The DOC must consider an offender's ability to pay in establishing a written pay plan. Any funds collected from felony

[28] *Id*.
[29] *Id*.
[30] Section 948.15(4), F.S.
[31] Section 948.15(5), F.S.
[32] Section 948.01(1)(a), F.S.
[33] Section 948.01(2), F.S.
[34] Florida Department of Corrections, *Probation Services, available at* http://www.dc.state.fl.us/cc/index.html (last visited February 17, 2022).
[35] Section 948.09(1)(a)1., F.S.

probationers may be used by the DOC to offset the costs associated with community supervision programs.[36]

Subsections 948.01(1) and (5), F.S., prohibit a private entity from providing probationary or supervision services to felony or misdemeanor offenders sentenced to probation or other supervision by the circuit court. As such, a private entity is authorized to provide supervision services to a misdemeanor offender sentenced by the county court, but cannot provide such services to a misdemeanor offender sentenced by the circuit court.

Remote Reporting in Community Supervision

Smartphones are widely used by the U.S. population. Smartphones are essentially handheld computers that also provide cellular service. They typically integrate a touchscreen interface, internet access, camera, video recorder, GPS navigation, and an operating system capable of running downloaded applications.[37]According to a survey conducted by Pew Research, 85 percent of U.S. adults say they own a smartphone.[38]

Over the past several years, a number of smartphone applications for community supervision have entered the market.[39] These applications are essentially case management and monitoring programs designed to run on such a device.[40]

In general, remote monitoring offers advantages and disadvantages. The advantages of remote monitoring include:

- Remote reporting and supervision, which allows the client to remotely submit reports to his or her officer with information related to employment status, living arrangements, contact information, and other important data.
- Calendar event management, which allows reminders to be set for important events, such as court dates, scheduled drug tests, or a reminder to take a prescribed drug at a specified time.
- Positive reinforcement, which allows recognition for positive behaviors, such as meeting curfews, negative drug tests, and timely meeting other obligations. These recognitions may be immediate or automated for delivery at certain times or upon demonstration of certain behaviors.
- Access to resources, which allows clients to access existing resources in real-time or some applications may offer direct support by integrating the delivery of certain services.

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[36] *Id*. Additionally, a felony probationer must pay a $2-per-month surcharge to be used by the DOC to pay for correctional probation officers' training and equipment, including radios, and firearms training, firearms, and similar equipment. Section 948.09(1)(a)2., F.S.

[37] George Drake and Joe Russo, *The Smart Phone as a Community Corrections Tool*, J. OF OFFENDER MONITORING, (Spring/Summer 2016), pp. 5-8, *available at* https://www.civicresearchinstitute.com/online/PDF/JOM-2901-01-Drake-Smartphone.pdf (last visited February 17, 2022).

[38] Pew Research Center, *Mobile Fact Sheet.* (Apr. 7, 2021), *available at* https://www.pewresearch.org/internet/fact-sheet/mobile/ (last visited February 17, 2022).

[39] American Probation and Parole Association, *Issue Paper: Leveraging the Power of Smartphone Applications to Enhance Community Supervision*, (Apr. 7, 2020), *available at* https://www.appa-net.org/eweb/docs/APPA/stances/ip-LPSAECS.pdf (last visited February 17, 2022).

[40] *Id*.

- Location monitoring and continuous tracking, which allows an officer to determine the location of the device and the client.[41]

There are also number of disadvantages to remote monitoring. The most prominent disadvantage is the ability of the client to separate from his or her device. However, some developers have developed tethering systems, which notify the officer when the client is not within a certain distance of his or her device.[42] There is also the issue of cellular phone coverage if the person is located in or travels to an area with poor service.[43] Another issue involves privacy concerns, as the applications may collect biometric data, personal health information, behavioral data, and may impact the client's right to privacy.[44]

The cost of remote reporting may vary depending on the approach used. There are essentially two different approaches to using smartphones for community supervision. The first approach involves a vendor-provided smartphone that comes installed with software, and the second involves installing the software application on the client's phone.[45] Vendor-provided phones are more expensive; however, they offer greater security and are capable of monitoring all phone activity and restricting access to certain functionalities depending on risk level or compliance with the conditions of supervision. Installing software on client-provided phones is less costly; however, the phones are less secure. For example, a client may remove a SIM card or a battery or put the phone in airplane mode.[46]

III. Effect of Proposed Changes:

The bill repeals the statutory prohibition on a private entity providing probationary or supervision services to misdemeanor offenders who are sentenced by a circuit court. The bill authorizes a private entity to provide probationary or supervision services to any misdemeanor offender who is placed on probation, regardless of whether such sentence is imposed by a county or circuit court. The bill authorizes the DOC to supervise misdemeanor offenders when such supervision is ordered by the circuit court, but retains the requirement that the DOC supervise felony offenders.

The bill transfers the authority to approve a contract with a private entity to provide supervision services for misdemeanor offenders from the county court judge or administrative judge to the chief judge of the circuit.

The bill authorizes probationers or offenders in community control to fulfill the reporting requirements of their terms and conditions of probation by reporting to their probation office remotely if approved by the relevant probation officer, county probation authority or entity, or the DOC and if the court has not excluded remote reporting in his or her order of probation. The

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[41] *Id.*, and *supra*, note 37.
[42] *Supra*, note 39.
[43] *Id*.
[44] *Id. See also* Todd Feathers, *"They Track Every Move": How US Parole Apps Created Digital Prisoners*, THE GUARDIAN, (Mar. 4, 2021), *available at* https://www.theguardian.com/global-development/2021/mar/04/they-track-every-move-how-us-parole-apps-created-digital-prisoners (last visited February 17, 2022).
[45] *Supra*, note 39.
[46] *Id*.

bill requires a probation officer to schedule meetings required as a condition of probation at times and locations that accommodate work schedules, family caregiving obligations, and medical care of the probationer, unless it poses a threat to public safety. The DOC and county probation entities must adopt probation reporting policies that allow for remote reporting and take the above-referenced scheduling conflicts into consideration.

This bill requires the DOC to implement the graduated incentives system for probationers and offenders in community control in a manner that encourages stable employment in addition to promoting compliance with terms of supervision and prioritizing the highest level of supervision for probationers and offenders presenting the greatest risk of recidivism. Under the bill, the DOC must incentivize educational achievement by awarding a 60-day reduction in the term of supervision for a probationer or offender in community control who completes an educational advancement activity during his or her term of supervision.

The bill requires a probationer or offender in community control to be given a 60-day reduction in supervision for each educational advancement activity he or she completes and the award of such a reduction does not require court approval. The bill defines "educational advancement activity" as obtaining a high school diploma, a high school equivalency diploma, an academic degree, or a vocational certificate.

A probationer or offender in community control who commits a subsequent violation of probation may forfeit any supervision term reduction awarded for completing an educational advancement activity, at the discretion of his or her probation officer.

The bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill may have an indeterminate impact on county governments that contract with private entities to provide misdemeanor probationary services. However, these provisions relate to the defense, prosecution, or punishment of criminal offenses, and criminal laws are exempt from the requirements of Art. VII, s. 18(d) of the Florida Constitution, relating to unfunded mandates.

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:

Private entities who contract to provide probationary services to misdemeanor offenders may experience an increase in workload. If these private entities implement a remote reporting program, it will incur costs related to such program.

Individuals on community supervision may be required to expend costs relating to obtaining a smartphone and maintaining service on the device.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on those counties that contract with private entities to provide probation and supervision services of misdemeanor offenders, due to a possible increase in probationers.

The bill will have an indeterminate fiscal impact on the DOC, as some probationers may be diverted away from the DOC's supervision.[47] The DOC may realize a cost savings when probation terms are reduced by 60 days for each educational activity a probationer or offender in community control completes. If the DOC implements a remote reporting program, it will incur costs related to such program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 948.01, 948.03, 948.05, 948.09, and 948.15.

[47] Department of Corrections, *2022 Agency Legislative Analysis of SB 752*, pg. 3, (Dec. 10, 2021) (on file with the Senate Committee on Criminal Justice).

IX. Additional Information:

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

PCS (529550) by Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice):
The proposed committee substitute:

- Allows probationers or offenders in community control to fulfill the reporting requirements of their terms and conditions of probation by reporting to their probation office ***remotely*** if approved by the relevant probation officer, county probation authority or entity, or the DOC and if the court has not excluded remote reporting in his or her order of probation;
- Requires the DOC to incentivize educational achievement by awarding a 60-day reduction in the term of supervision for a probationer or offender in community control who completes an educational advancement activity; and
- Makes conforming changes.

CS by Criminal Justice on January 25, 2022:
The committee substitute:

- Authorizes the DOC to supervise misdemeanor offenders when ordered to do so by the circuit court;
- Requires the chief judge of the circuit to approve a contract with a private entity to provide supervision services for misdemeanor offenders, rather than the county court judge or administrative judge; and
- Makes conforming changes.

B. Amendments:

None.

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


529550

576-03093-22

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to probationary or supervision services for misdemeanor offenders; amending s. 948.01, F.S.; authorizing the Department of Corrections to supervise certain misdemeanor offenders; deleting a prohibition on private entities providing probationary or supervision services to certain misdemeanor offenders; amending s. 948.03, F.S.; authorizing a probationer or offender in community control to report to a probation officer through remote reporting under specified circumstances; requiring a probation officer to take specified circumstances into consideration when scheduling meetings; requiring the department and county probation authorities or entities to adopt and make available certain probation reporting policies; deleting remaining within a specified place as a standard condition of probation; amending s. 948.05, F.S.; requiring the department to reduce a probationer's or offender's supervision term by a specified amount of time for completing an educational advancement activity; defining the term "educational advancement activity"; amending s. 948.15, F.S.; authorizing a private or public entity to provide probation services and other specified programming to misdemeanor offenders; revising who may approve specified contracts; amending s. 948.09, F.S.;


529550

576-03093-22

conforming a cross-reference; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) and subsection (5) of section 948.01, Florida Statutes, are amended to read:

948.01 When court may place defendant on probation or into community control.—

(1) Any state court having original jurisdiction of criminal actions may at a time to be determined by the court, with or without an adjudication of the guilt of the defendant, hear and determine the question of the probation of a defendant in a criminal case, except for an offense punishable by death, who has been found guilty by the verdict of a jury, has entered a plea of guilty or a plea of nolo contendere, or has been found guilty by the court trying the case without a jury.

(a) If the court places the defendant on probation or into community control for a felony, the department shall provide immediate supervision by an officer employed in compliance with the minimum qualifications for officers as provided in s. 943.13. The department may provide supervision to misdemeanor offenders sentenced or placed on probation by a circuit court when so ordered by the sentencing court. A private entity may not provide probationary or supervision services to felony ~~or misdemeanor~~ offenders sentenced or placed on probation or other supervision ~~by the circuit court~~.

(5) The imposition of sentence may not be suspended and the defendant thereupon placed on probation or into community

control unless the defendant is placed under the custody of the department or another public or private entity. A private entity may not provide probationary or supervision services to felony ~~or misdemeanor~~ offenders sentenced or placed on probation or other supervision ~~by the circuit court~~.

Section 2. Paragraphs (a) and (d) of subsection (1) of section 948.03, Florida Statutes, are amended to read:

948.03 Terms and conditions of probation.—

(1) The court shall determine the terms and conditions of probation. Conditions specified in this section do not require oral pronouncement at the time of sentencing and may be considered standard conditions of probation. These conditions may include among them the following, that the probationer or offender in community control shall:

(a) Report to the probation officer as directed. Such reporting requirements may be fulfilled through remote reporting if approved by the relevant probation officer, the relevant county probation authority or entity, or the Department of Corrections and if the court has not excluded the possibility of remote reporting by the defendant in his or her order of probation. The probation officer shall schedule meetings required as a condition of probation at times and locations that take into consideration and accommodate the work schedule, family caregiver obligations, and medical care of the probationer unless doing so would cause a threat to public safety. The Department of Corrections and county probation authorities or entities shall adopt and make available probation reporting policies that allow for remote reporting and consider the scheduling conflicts referenced in this paragraph.

~~(d) Remain within a specified place.~~

Section 3. Subsection (2) of section 948.05, Florida Statutes, is amended to read:

948.05 Court to admonish or commend probationer or offender in community control; graduated incentives.—

(2) The department shall implement a system of graduated incentives to promote compliance with the terms of supervision, encourage stable employment, and prioritize the highest levels of supervision for probationers or offenders presenting the greatest risk of recidivism.

(a) As part of the graduated incentives system, the department may, without leave of court, offer the following incentives to a compliant probationer or offender in community control:

1. Up to 25 percent reduction of required community service hours;

2. Waiver of supervision fees;

3. Reduction in frequency of reporting;

4. Permission to report by mail or telephone; or

5. Transfer of an eligible offender to administrative probation as authorized under s. 948.013.

(b) The department may also incentivize positive behavior and compliance with recommendations to the court to modify the terms of supervision, including recommending:

1. Permission to travel;

2. Reduction of supervision type;

3. Modification or cessation of curfew;

4. Reduction or cessation of substance abuse testing; or

5. Early termination of supervision.

(c) The department shall, without leave of court, incentivize educational achievement by awarding a compliant probationer or offender in community control with a 60-day reduction of his or her term of supervision for each educational advancement activity he or she completes during the term of supervision. As used in this paragraph, the term "educational advancement activity" means a high school equivalency degree, an academic degree, or a vocational certificate.

(d) A probationer or offender who commits a subsequent violation of probation may forfeit any previously earned probation incentive, as determined appropriate by his or her probation officer.

Section 4. Subsections (2) and (3) of section 948.15, Florida Statutes, are amended to read:

948.15 Misdemeanor probation services.—

(2) A private entity or public entity, including a licensed substance abuse education and intervention program, under the supervision of the board of county commissioners or the court may provide probation services and licensed substance abuse education and treatment intervention programs for misdemeanor offenders sentenced or placed on probation ~~by the county court~~.

(3) Any private entity, including a licensed substance abuse education and intervention program, providing services for the supervision of misdemeanor probationers must contract with the county in which the services are to be rendered. The chief judge ~~In a county having a population of fewer than 70,000, the county court judge, or the administrative judge of the county court in a county that has more than one county court judge,~~ must approve the contract. Terms of the contract must state, but

are not limited to:

(a) The extent of the services to be rendered by the entity providing supervision or rehabilitation.

(b) Staff qualifications and criminal record checks of staff.

(c) Staffing levels.

(d) The number of face-to-face contacts with the offender.

(e) Procedures for handling the collection of all offender fees and restitution.

(f) Procedures for handling indigent offenders which ensure placement irrespective of ability to pay.

(g) Circumstances under which revocation of an offender's probation may be recommended.

(h) Reporting and recordkeeping requirements.

(i) Default and contract termination procedures.

(j) Procedures that aid offenders with job assistance.

(k) Procedures for accessing criminal history records of probationers.

In addition, the entity shall supply the chief judge's office with a quarterly report summarizing the number of offenders supervised by the private entity, payment of the required contribution under supervision or rehabilitation, and the number of offenders for whom supervision or rehabilitation will be terminated. All records of the entity must be open to inspection upon the request of the county, the court, the Auditor General, the Office of Program Policy Analysis and Government Accountability, or agents thereof.

Section 5. Subsection (6) of section 948.09, Florida

Statutes, is amended to read:

948.09 Payment for cost of supervision and other monetary obligations.—

(6) The department shall establish a payment plan for all costs ordered by the courts for collection by the department and a priority order for payments, except that victim restitution payments authorized under s. 948.03(1)(e) ~~s. 948.03(1)(f)~~ take precedence over all other court-ordered payments. The department is not required to disburse cumulative amounts of less than $10 to individual payees established on this payment plan.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 752
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommitte on Criminal and Civil Justice); Criminal Justice Committee; and Senator Gainer and others
SUBJECT:	Probationary or Supervision Services for Misdemeanor Offenders
DATE:	March 2, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Jones	CJ	**Fav/CS**
2.	Atchley	Harkness	ACJ	**Recommend: Fav/CS**
3.	Atchley	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 752 removes a statutory prohibition on a private entity providing probationary or supervision services to misdemeanor offenders who are sentenced by a circuit court. Under current law, a private or a public entity may only provide probation services to offenders sentenced by a county court.

Currently, the Department of Corrections (DOC) must supervise felony and misdemeanor offenders who are sentenced to or placed on probation or other supervision by a circuit court. The bill authorizes the DOC to supervise misdemeanor offenders when such supervision is ordered by the circuit court, but retains the requirement that the DOC supervise felony offenders.

The bill transfers the authority to approve a contract with a private entity to provide supervision services for misdemeanor offenders from the county court judge or administrative judge to the chief judge of the circuit.

The bill authorizes probationers or offenders in community control to fulfill the reporting requirements of their terms and conditions of probation by reporting to their probation office *remotely* if approved by the relevant probation officer, county probation authority or entity, or the DOC and if the court has not excluded remote reporting in his or her order of probation. The bill requires the probation officer to schedule meetings required as a condition of probation at

times and locations that accommodate work schedules, family caregiving obligations, and medical care of the probationer, unless it poses a threat to public safety.

The bill requires the DOC to implement the graduated incentives system in a manner that encourages stable employment in addition to promoting compliance with terms of supervision and prioritizing the highest level of supervision for probationers and offenders presenting the greatest risk of recidivism. The DOC must incentivize educational achievement by awarding a 60 day reduction in the term of supervision for a probationer or offender in community control who completes an educational advancement activity, such as obtaining a high school diploma, a high school equivalency degree, an academic degree, or a vocational certificate, during his or her term of supervision. A probationer or offender in community control who commits a subsequent violation of probation may forfeit any reduction awarded for completing an educational advancement activity, at the discretion of his or her probation officer.

The bill will have an indeterminate fiscal impact on the DOC. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

II. Present Situation:

Court Jurisdiction

Florida has a two-tiered trial court system that consists of circuit courts and county courts. The state Constitution requires a circuit court to be established in each judicial circuit established by the Legislature, of which there are twenty.[1]

Circuit courts have exclusive original jurisdiction over:
- All actions at law not cognizable by the county courts;
- Proceedings related to settling estates of decedents and minors, granting testamentary letters, guardianship, involuntary hospitalization, the determination of incompetency, and other jurisdiction usually pertaining to probate courts;
- All cases in equity including cases related to juveniles, except traffic offenses as provided in chs. 316 and 985, F.S.;
- All felonies and all misdemeanors arising out of the same circumstances as a felony which is also charged;
- All cases involving the legality of any tax assessment or toll or denial of refund, except as provided in s. 72.011, F.S.;
- Ejectment actions; and
- All actions involving the title and boundaries of real property.[2]

[1] Art. V, ss. 1 and 5, FLA. CONST. A list of judicial circuits can be found at https://www.flcourts.org/Florida-Courts/Trial-Courts-Circuit (last visited February 17, 2022).
[2] Section 26.012(2), F.S.

The state Constitution also establishes a county court in each county.[3] County courts have original jurisdiction over:

- Misdemeanor cases not cognizable by the circuit courts;
- Violations of municipal and county ordinances; and
- Actions at law, except those within the exclusive jurisdiction of the circuit courts, in which the matter in controversy does not exceed $30,000, exclusive of interest, costs, and attorney fees.[4]

Generally, felony offenses are adjudicated by the circuit court and misdemeanor offenses are adjudicated by the county court. However, circuit courts routinely adjudicate misdemeanor charges when:

- A misdemeanor charge arises out of the same circumstances as a felony; or
- A felony charge is reduced or dismissed in circuit court and the court retains jurisdiction over the remaining misdemeanor charge.

Probation and Community Control

Probation is a form of community supervision requiring specified contacts with probation officers and compliance with certain terms and conditions.[5] The court determines the terms and conditions of probation.[6] Section 948.03, F.S., provides standard conditions of probation; however, a court may sentence an offender to special terms and conditions at the time of sentencing, such as substance abuse treatment. Additionally, a probationer is required to comply with several standard conditions of probation which may include:

- Reporting to the probation officer as directed.
- Permitting the probation officer to visit the probationer at his or her home.
- Working faithfully at suitable employment, when possible.
- Residing at a specified place.
- Living without violating the law.
- Paying restitution to any aggrieved party for the damage or loss caused by a probationer's offense.
- Being prohibited from possessing, carrying, or owning a firearm or weapon, without the probation officer's consent.
- Being prohibited from using intoxicants to excess or possessing any drugs or narcotics.[7]

Community control is a form of intensive individualized supervision of an offender who remains in the community, but whose freedom is restricted within the home, community, or noninstitutional residential placement and includes specific sanctions and monitoring by probation officers with restricted caseloads.[8] In addition to the standard conditions which apply

[3] Art. V, s. 6, FLA. CONST.
[4] Section 34.01(1), F.S. The jurisdictional limit for civil actions was $15,000 prior to January 1, 2020, at which time the jurisdictional limit was raised to $30,000. The jurisdictional limit is scheduled to rise to $50,000 on January 1, 2023. The law provides a process by which the jurisdictional limit is to be reviewed and adjusted every 10 years beginning July 1, 2030; however it may not be lower than $50,000.
[5] Section 948.01(8), F.S.
[6] Section 948.03, F.S.
[7] Section 948.03, F.S.
[8] Section 948.001(3), F.S.

to normal probationers, an offender on community control must: be confined to an agreed-upon residence during any hours he or she is away from work or public service activities; complete mandatory community services; and be supervised by electronic monitoring.[9]

Education and Learning as a Condition of Probation or Community Control

Section 948.037, F.S., authorizes a court to require an offender who has not obtained a high school diploma or a high school equivalency diploma or who lacks basic or functional literacy skills, to make a good faith effort toward attaining literacy skills or a high school equivalency diploma as a condition of probation or community control.[10] A court may not revoke probation or community control because of an offender's inability to achieve literacy skills or a diploma, but may revoke probation or community control if the offender fails to make a good faith effort towards achieving such skills or diploma.[11] A court may grant a probationer or offender in community control early termination of supervision upon his or her successful completion of an approved program.

Reduction or Termination of Term of Probation or Community Control

Generally, once a probationer completes the period of probation, he or she is released from probation and the court no longer retains jurisdiction to sentence the offender for the offense for which probation was allowed. However, if a probationer has performed satisfactorily, has not been found in violation of any terms or conditions of supervision, and has met all financial conditions imposed by the court, including fines, court costs, and restitution, his or her probation officer may recommend early termination of probation to the court at any time before the scheduled termination date.[12]

Early Termination or Conversion to Administrative Probation

Under s. 948.06(4), F.S., upon the probationer's motion,[13] the court shall order early termination of supervision or convert the supervisory term to administrative probation[14] if all of the following conditions are met:

- The probationer has completed at least half of the term of probation to which he or she was sentenced.
- The probationer has successfully completed all other conditions of probation.
- The court has not found the probationer in violation of probation pursuant to a filed violation of probation affidavit at any point during the current supervisory term.
- The parties did not specifically exclude the possibility of early termination or conversion to administrative probation as part of a negotiated sentence.
- The probationer does not qualify as a violent felony offender of special concern under s. 948.06(8)(b), F.S.[15]

[9] Section 948.101, F.S.
[10] Section 948.037, F.S.
[11] *Id*. "Good faith effort" means the offender is enrolled in a program of instruction and is attending and making satisfactory progress toward completion of the requirements.
[12] Section 948.04, F.S.
[13] This provision only applies to a defendant sentenced on or after October 1, 2019. See s. 948.04(4), F.S.
[14] "Administrative probation" is a form of no contact, nonreporting supervision. A court may order administrative probation, or the DOC may transfer an offender to administrative probation under specified circumstances. Section 948.001(1), F.S.
[15] Section 948.04(4), F.S.

However, a court may decline to early terminate the probationary term or convert the term to administrative probation if it makes written findings that continued reporting probation is necessary to protect the community or the interest of justice.[16] Additionally, an offender on community control is not eligible to motion for mandatory early termination or conversion to administrative probation under s. 948.04, F.S.[17]

Graduated Incentives

Section 948.05(2), F.S., requires the DOC to implement a system of graduated incentives to promote compliance with the terms of supervision and prioritize the highest levels of supervision for probationers or offenders presenting the greatest risk of recidivism. As part of the graduated incentives system, the department may offer, without leave of the court, the following incentives to a compliant probationer or offender in community control:

- Up to 25 percent reduction of required community service hours;
- Waiver of supervision fees;
- Reduction in frequency of reporting;
- Permission to report by mail or telephone; or
- Transfer of an eligible offender to administration probation as authorized under s. 948.013, F.S.[18]

The DOC may also incentivize positive behavior and compliance by recommending to the court to modify a probationer's terms of supervision, which may include recommending:

- Permission to travel;
- Reduction of supervision type;
- Modification or cessation of curfew;
- Reduction or cessation of substance abuse testing; or
- Early termination of supervision.[19]

A probationer or offender in community control may forfeit any previously earned probation incentive if he or she commits a subsequent violation of probation.[20] Graduated incentives are currently offered at the discretion of the probation officer or court and a probationer or offender in community control is not entitled to any such graduated incentive.

Educational Attainment Gain Time Award for Inmates

Section 944.275, F.S., authorizes the DOC to grant deductions from prison sentences in the form of gain time to encourage satisfactory behavior and to provide incentives for inmates to participate in productive activities. Specifically, s. 944.275(4)(d), F.S., authorizes the DOC to award an inmate who completes a high school equivalency diploma or vocational certificate a one-time award of 60 days of incentive gain time.[21]

[16] Section 948.04(5), F.S.
[17] Section 948.04(6), F.S.
[18] Section 948.05(2)(a), F.S.
[19] Section 948.05(2)(b), F.S.
[20] Section 948.05(2)(c), F.S.
[21] Section 944.275(4)(d), F.S.

Probationers or offenders in community control are not entitled to a similar reduction of supervision term under the graduated incentives system or any other statutory authority.

Sentence of Probation

County Court Probation

A defendant who is placed on probation after being found guilty of a misdemeanor may not be sentenced to a term of supervision exceeding six months, unless otherwise ordered by the court.[22] Any person sentenced to misdemeanor probation by the county court must pay at least $40 per month, as determined by the court, to the court approved public or private entity providing misdemeanor supervision.[23]

A private entity or public entity, including licensed substance abuse education and intervention programs, may provide probation services to offenders sentenced by a county court, when such services are provided under the supervision of the board of county commissioners or the court.[24] For example, the Salvation Army provides supervision services including drug testing, job assistance, community service placement, and substance abuse assistance and rehabilitation to misdemeanor probationers in multiple Florida counties.[25] Professional Probation Services and its affiliated company, Judicial Correction Services, provide services in a number of Florida counties.[26]

Any private entity providing supervision services for misdemeanor probationers must contract with the county in which the services will be provided.[27] In a county with a population of less than 70,000, the county court judge, or in a county with more than one county court judge, the administrative judge of the county court must approve the contract. The terms of the contract must include, but are not limited to:

- The extent of the services to be rendered by the entity providing supervision and rehabilitation.
- Staff qualifications and criminal record checks of staff.
- Staffing levels.
- The number of face-to-face contacts with probationers.
- Procedures for handling the collection of probationer fees and restitution.
- Procedures for handling indigent probationers that ensure placement irrespective of ability to pay.
- Circumstances under which revocation of a probationer's supervision may be recommended.
- Reporting and record keeping requirements.
- Default and contract termination procedures.

[22] Section 948.15(1), F.S.
[23] Section 948.09(1)(b), F.S.
[24] Section 948.15(2), F.S.
[25] Such misdemeanor probation services are provided in Citrus, Dixie, Duval, Gilchrist, Highlands, and Marion counties. The Salvation Army, *Correctional Services*, *available at* https://salvationarmyflorida.org/correctional-services/ (last visited February 17, 2022).
[26] *See* Professional Probation Services, *Our Companies*, *available at* https://ppsfamily.com/our-companies/ (last visited February 17, 2022).
[27] Section 948.15(3), F.S.

- Procedures that aid probationers with job assistance.
- Procedures for accessing criminal history records of probationers.[28]

On a quarterly basis, the entity must report to the chief judge a summary of the number of probationers supervised by the private entity, payment of the required contribution under supervision or rehabilitation, and the number of probationers for whom supervision will be terminated. The entity must permit its records to be inspected upon the request of the county, the court, the Auditor General, the Office of Program Policy Analysis and Government Accountability, or any agent thereof.[29]

A private entity that charges a fee for providing supervision services to probationers must register with the board of county commissioners in the county in which the entity offers services. The entity must provide specified information for each program it operates, including:

- The length of time the program has been operating in the county;
- A list of the staff and a summary of their qualifications;
- A summary of the types of services that are offered under the program; and
- The fees the entity charges for court-ordered services and any procedures for indigent probationers.[30]

A private entity, including a licensed substance abuse education and intervention program, providing misdemeanor supervision services must comply with all other applicable provisions of law.[31]

Circuit Court Probation

If the circuit court places a defendant on probation for a felony, the DOC must supervise the defendant.[32] A defendant who is placed on probation for a misdemeanor may not be placed under the DOC's supervision unless the circuit court was the court of original jurisdiction.[33] The DOC currently supervises more than 164,000 offenders on probation or in community control throughout Florida.[34]

Any person placed on probation under ch. 948, F.S., must pay the DOC supervision fees equal to the total month or portion of a month of supervision times the court-ordered amount, but such amount cannot exceed the actual per diem cost of supervision.[35] The DOC must consider an offender's ability to pay in establishing a written pay plan. Any funds collected from felony

[28] *Id*.
[29] *Id*.
[30] Section 948.15(4), F.S.
[31] Section 948.15(5), F.S.
[32] Section 948.01(1)(a), F.S.
[33] Section 948.01(2), F.S.
[34] Florida Department of Corrections, *Probation Services, available at* http://www.dc.state.fl.us/cc/index.html (last visited February 17, 2022).
[35] Section 948.09(1)(a)1., F.S.

probationers may be used by the DOC to offset the costs associated with community supervision programs.[36]

Subsections 948.01(1) and (5), F.S., prohibit a private entity from providing probationary or supervision services to felony or misdemeanor offenders sentenced to probation or other supervision by the circuit court. As such, a private entity is authorized to provide supervision services to a misdemeanor offender sentenced by the county court, but cannot provide such services to a misdemeanor offender sentenced by the circuit court.

Remote Reporting in Community Supervision

Smartphones are widely used by the U.S. population. Smartphones are essentially handheld computers that also provide cellular service. They typically integrate a touchscreen interface, internet access, camera, video recorder, GPS navigation, and an operating system capable of running downloaded applications.[37]According to a survey conducted by Pew Research, 85 percent of U.S. adults say they own a smartphone.[38]

Over the past several years, a number of smartphone applications for community supervision have entered the market.[39] These applications are essentially case management and monitoring programs designed to run on such a device.[40]

In general, remote monitoring offers advantages and disadvantages. The advantages of remote monitoring include:

- Remote reporting and supervision, which allows the client to remotely submit reports to his or her officer with information related to employment status, living arrangements, contact information, and other important data.
- Calendar event management, which allows reminders to be set for important events, such as court dates, scheduled drug tests, or a reminder to take a prescribed drug at a specified time.
- Positive reinforcement, which allows recognition for positive behaviors, such as meeting curfews, negative drug tests, and timely meeting other obligations. These recognitions may be immediate or automated for delivery at certain times or upon demonstration of certain behaviors.
- Access to resources, which allows clients to access existing resources in real-time or some applications may offer direct support by integrating the delivery of certain services.

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[36] *Id*. Additionally, a felony probationer must pay a $2-per-month surcharge to be used by the DOC to pay for correctional probation officers' training and equipment, including radios, and firearms training, firearms, and similar equipment. Section 948.09(1)(a)2., F.S.

[37] George Drake and Joe Russo, *The Smart Phone as a Community Corrections Tool*, J. OF OFFENDER MONITORING, (Spring/Summer 2016), pp. 5-8, *available at* https://www.civicresearchinstitute.com/online/PDF/JOM-2901-01-Drake-Smartphone.pdf (last visited February 17, 2022).

[38] Pew Research Center, *Mobile Fact Sheet.* (Apr. 7, 2021), *available at* https://www.pewresearch.org/internet/fact-sheet/mobile/ (last visited February 17, 2022).

[39] American Probation and Parole Association, *Issue Paper: Leveraging the Power of Smartphone Applications to Enhance Community Supervision*, (Apr. 7, 2020), *available at* https://www.appa-net.org/eweb/docs/APPA/stances/ip-LPSAECS.pdf (last visited February 17, 2022).

[40] *Id*.

- Location monitoring and continuous tracking, which allows an officer to determine the location of the device and the client.[41]

There are also number of disadvantages to remote monitoring. The most prominent disadvantage is the ability of the client to separate from his or her device. However, some developers have developed tethering systems, which notify the officer when the client is not within a certain distance of his or her device.[42] There is also the issue of cellular phone coverage if the person is located in or travels to an area with poor service.[43] Another issue involves privacy concerns, as the applications may collect biometric data, personal health information, behavioral data, and may impact the client's right to privacy.[44]

The cost of remote reporting may vary depending on the approach used. There are essentially two different approaches to using smartphones for community supervision. The first approach involves a vendor-provided smartphone that comes installed with software, and the second involves installing the software application on the client's phone.[45] Vendor-provided phones are more expensive; however, they offer greater security and are capable of monitoring all phone activity and restricting access to certain functionalities depending on risk level or compliance with the conditions of supervision. Installing software on client-provided phones is less costly; however, the phones are less secure. For example, a client may remove a SIM card or a battery or put the phone in airplane mode.[46]

III. Effect of Proposed Changes:

The bill repeals the statutory prohibition on a private entity providing probationary or supervision services to misdemeanor offenders who are sentenced by a circuit court. The bill authorizes a private entity to provide probationary or supervision services to any misdemeanor offender who is placed on probation, regardless of whether such sentence is imposed by a county or circuit court. The bill authorizes the DOC to supervise misdemeanor offenders when such supervision is ordered by the circuit court, but retains the requirement that the DOC supervise felony offenders.

The bill transfers the authority to approve a contract with a private entity to provide supervision services for misdemeanor offenders from the county court judge or administrative judge to the chief judge of the circuit.

The bill authorizes probationers or offenders in community control to fulfill the reporting requirements of their terms and conditions of probation by reporting to their probation office remotely if approved by the relevant probation officer, county probation authority or entity, or the DOC and if the court has not excluded remote reporting in his or her order of probation. The

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[41] *Id.*, and *supra*, note 37.
[42] *Supra*, note 39.
[43] *Id*.
[44] *Id. See also* Todd Feathers, *"They Track Every Move": How US Parole Apps Created Digital Prisoners*, THE GUARDIAN, (Mar. 4, 2021), *available at* https://www.theguardian.com/global-development/2021/mar/04/they-track-every-move-how-us-parole-apps-created-digital-prisoners (last visited February 17, 2022).
[45] *Supra*, note 39.
[46] *Id*.

bill requires a probation officer to schedule meetings required as a condition of probation at times and locations that accommodate work schedules, family caregiving obligations, and medical care of the probationer, unless it poses a threat to public safety. The DOC and county probation entities must adopt probation reporting policies that allow for remote reporting and take the above-referenced scheduling conflicts into consideration.

This bill requires the DOC to implement the graduated incentives system for probationers and offenders in community control in a manner that encourages stable employment in addition to promoting compliance with terms of supervision and prioritizing the highest level of supervision for probationers and offenders presenting the greatest risk of recidivism. Under the bill, the DOC must incentivize educational achievement by awarding a 60-day reduction in the term of supervision for a probationer or offender in community control who completes an educational advancement activity during his or her term of supervision.

The bill requires a probationer or offender in community control to be given a 60-day reduction in supervision for each educational advancement activity he or she completes and the award of such a reduction does not require court approval. The bill defines "educational advancement activity" as obtaining a high school diploma, a high school equivalency diploma, an academic degree, or a vocational certificate.

A probationer or offender in community control who commits a subsequent violation of probation may forfeit any supervision term reduction awarded for completing an educational advancement activity, at the discretion of his or her probation officer.

The bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill may have an indeterminate impact on county governments that contract with private entities to provide misdemeanor probationary services. However, these provisions relate to the defense, prosecution, or punishment of criminal offenses, and criminal laws are exempt from the requirements of Art. VII, s. 18(d) of the Florida Constitution, relating to unfunded mandates.

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:

Private entities who contract to provide probationary services to misdemeanor offenders may experience an increase in workload. If these private entities implement a remote reporting program, it will incur costs related to such program.

Individuals on community supervision may be required to expend costs relating to obtaining a smartphone and maintaining service on the device.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on those counties that contract with private entities to provide probation and supervision services of misdemeanor offenders, due to a possible increase in probationers.

The bill will have an indeterminate fiscal impact on the DOC, as some probationers may be diverted away from the DOC's supervision.[47] The DOC may realize a cost savings when probation terms are reduced by 60 days for each educational activity a probationer or offender in community control completes. If the DOC implements a remote reporting program, it will incur costs related to such program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 948.01, 948.03, 948.05, 948.09, and 948.15.

[47] Department of Corrections, *2022 Agency Legislative Analysis of SB 752*, pg. 3, (Dec. 10, 2021) (on file with the Senate Committee on Criminal Justice).

IX. Additional Information:

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

CS/CS by Appropriations on February 28, 2022:
The committee substitute:

- Allows probationers or offenders in community control to fulfill the reporting requirements of their terms and conditions of probation by reporting to their probation office ***remotely*** if approved by the relevant probation officer, county probation authority or entity, or the DOC and if the court has not excluded remote reporting in his or her order of probation;
- Requires the DOC to incentivize educational achievement by awarding a 60-day reduction in the term of supervision for a probationer or offender in community control who completes an educational advancement activity; and
- Makes conforming changes.

CS by Criminal Justice on January 25, 2022:
The committee substitute:

- Authorizes the DOC to supervise misdemeanor offenders when ordered to do so by the circuit court;
- Requires the chief judge of the circuit to approve a contract with a private entity to provide supervision services for misdemeanor offenders, rather than the county court judge or administrative judge; and
- Makes conforming changes.

B. Amendments:

None.

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

By the Committee on Criminal Justice; and Senators Gainer and Pizzo

591-02279-22 2022752c1

A bill to be entitled

An act relating to probationary or supervision services for misdemeanor offenders; amending s. 948.01, F.S.; authorizing the Department of Corrections to supervise certain misdemeanor offenders; deleting a prohibition on private entities providing probationary or supervision services to certain misdemeanor offenders; amending s. 948.15, F.S.; authorizing a private or public entity to provide probation services and other specified programming to misdemeanor offenders; revising who may approve specified contracts; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) and subsection (5) of section 948.01, Florida Statutes, are amended to read:

948.01 When court may place defendant on probation or into community control.—

(1) Any state court having original jurisdiction of criminal actions may at a time to be determined by the court, with or without an adjudication of the guilt of the defendant, hear and determine the question of the probation of a defendant in a criminal case, except for an offense punishable by death, who has been found guilty by the verdict of a jury, has entered a plea of guilty or a plea of nolo contendere, or has been found guilty by the court trying the case without a jury.

(a) If the court places the defendant on probation or into

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community control for a felony, the department shall provide immediate supervision by an officer employed in compliance with the minimum qualifications for officers as provided in s. 943.13. The department may provide supervision to misdemeanor offenders sentenced or placed on probation by a circuit court when so ordered by the sentencing court. A private entity may not provide probationary or supervision services to felony ~~or misdemeanor~~ offenders sentenced or placed on probation or other supervision ~~by the circuit court~~.

(5) The imposition of sentence may not be suspended and the defendant thereupon placed on probation or into community control unless the defendant is placed under the custody of the department or another public or private entity. A private entity may not provide probationary or supervision services to felony ~~or misdemeanor~~ offenders sentenced or placed on probation or other supervision ~~by the circuit court~~.

Section 2. Subsections (2) and (3) of section 948.15, Florida Statutes, are amended to read:

948.15 Misdemeanor probation services.—

(2) A private entity or public entity, including a licensed substance abuse education and intervention program, under the supervision of the board of county commissioners or the court may provide probation services and licensed substance abuse education and treatment intervention programs for misdemeanor offenders sentenced or placed on probation ~~by the county court~~.

(3) Any private entity, including a licensed substance abuse education and intervention program, providing services for the supervision of misdemeanor probationers must contract with the county in which the services are to be rendered. The chief

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

judge ~~In a county having a population of fewer than 70,000, the county court judge, or the administrative judge of the county court in a county that has more than one county court judge,~~ must approve the contract. Terms of the contract must state, but are not limited to:

(a) The extent of the services to be rendered by the entity providing supervision or rehabilitation.

(b) Staff qualifications and criminal record checks of staff.

(c) Staffing levels.

(d) The number of face-to-face contacts with the offender.

(e) Procedures for handling the collection of all offender fees and restitution.

(f) Procedures for handling indigent offenders which ensure placement irrespective of ability to pay.

(g) Circumstances under which revocation of an offender's probation may be recommended.

(h) Reporting and recordkeeping requirements.

(i) Default and contract termination procedures.

(j) Procedures that aid offenders with job assistance.

(k) Procedures for accessing criminal history records of probationers.

In addition, the entity shall supply the chief judge's office with a quarterly report summarizing the number of offenders supervised by the private entity, payment of the required contribution under supervision or rehabilitation, and the number of offenders for whom supervision or rehabilitation will be terminated. All records of the entity must be open to inspection

upon the request of the county, the court, the Auditor General, the Office of Program Policy Analysis and Government Accountability, or agents thereof.

Section 3. This act shall take effect July 1, 2022.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR GEORGE B. GAINER
2nd District

COMMITTEES:
Appropriations Subcommittee on Transportation, Tourism, and Economic Development, *Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Criminal Justice
Ethics and Elections
Transportation

February 16, 2022

Re: SB 752

Dear Chair Stargel,

I am respectfully requesting Senate Bill 752, related to Probationary or Supervision Services for Misdemeanor Offenders, be placed on the agenda for the next meeting of the Appropriations Committee.

I appreciate your consideration of this bill. If there are any questions or concerns, please do not hesitate to call my office at (850) 487-5002.

Thank you,



Senator George Gainer
District 2

REPLY TO:
❒ 840 West 11th Street, Panama City, Florida 32401 (850) 747-5454
❒ Northwest Florida State College, 100 East College Boulevard, Building 330, Rooms 105 and 112, Niceville, Florida 32578 (850) 747-5454
❒ 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002

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

February 28, 2022
Meeting Date

Appropriations
Committee

SB 752
Bill Number or Topic

Amendment Barcode (if applicable)

Name Matt Puckett

Phone

Address 300 East Brevard Street
Street

Email matt@flpba.org

Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida Police Benevolent 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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2/28/22
Meeting Date

752
Bill Number or Topic

APPROPRIATIONS
Committee

Amendment Barcode (if applicable)

Name AARON WAYT "WAIT"
FL ASSN OF CRIM DEFENSE LAWYERS

Phone (407) 435-3194

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.

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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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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 Appropriations

BILL:	CS/CS/SB 768
INTRODUCER:	Appropriations Committee; Health Policy Committee; and Senator Rodriguez
SUBJECT:	Department of Health
DATE:	March 2, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle and Looke	Brown	HP	**Fav/CS**
2.	Howard	Money	AHS	**Recommend: Favorable**
3.	Howard	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 768 addresses numerous health care-related issues regulated by the Department of Health (DOH). The bill:

- Updates the "Targeted Outreach for Pregnant Women Act of 1998";
- Amends section 381.0303, Florida Statutes., to specify that for pediatric special needs shelters, the DOH is the lead agency to coordinate local medical and health care providers for the staffing and management of the shelters and is the decision-making authority for determining the medical supervision in each special needs shelter;
- Allows the DOH to collect samples of marijuana and marijuana delivery devices, in general, from a medical marijuana treatment center (MMTC) for specified testing, rather than only samples of edibles;
- Expands MMTC recall requirements to all marijuana products and delivery devices, rather than only edibles;
- Allows an MMTC applicant that applies for the MMTC license reserved for a class member of Pigford v. Glickman or In Re Black Farmers Litigation to transfer its initial application fee to one subsequent opportunity to apply for licensure as an MMTC if that applicant is determined through the application process to be a member of the Pigford v. Glickman or In Re Black Farmers Litigation and is not awarded that license;
- Provides an exception from criminal laws for the DOH employees to acquire, possess, test, transport, and lawfully dispose of marijuana and marijuana delivery devices;

- Amends statutes regulating several types of health care professions, including allopathic and osteopathic physicians, nurses, midwives, psychologists, orthotists, prosthetists, clinical lab personnel, chiropractors, mental health counselors, clinical social workers, and marriage and family therapists;
- Revises the membership requirement for the Rare Disease Advisory Council to include two individuals who are caregivers for individuals with a rare disease instead of one individual as appointed by both the President of the Senate and the Speaker of the House of Representatives;
- Authorizes the administrative services organization representing all Healthy Start Coalitions under section 409.975(4) to use any method of telecommunication to conduct meetings for any authorized function, provided that the public is given proper notice of and reasonable access to the meeting;
- Amends sections 460.406, 468.803, 483.824, and 490.005, Florida Statutes, to delete references to the term "regional" and replace it with the term "institutional" to conform with the U.S. Department of Education accreditation nomenclature for approving health care-related educational institutions;
- The bill revises the eligibility requirements for parents or legal guardians who received an award under the Florida Birth-Related Neurological Injury Compensation Plan before January 1, 2021, to eliminate the requirement that the child must be currently receiving benefits under the plan to receive the award. The bill requires the plan to make retroactive payments in a lump sum or in periodic payments as designated by the parents or legal guardians by July 1, 2022, to eligible parents or legal guardians; and
- Amends section 766.314, Florida Statutes, authorizing the Florida Birth-Related Neurological Injury Compensation Association (NICA) to collect and enforce physician assessments in circuit court, if necessary, and requires the NICA to notify the DOH and the appropriate board of any unpaid final judgments against a physician within a specific timeframe.

The bill is projected to have an insignificant negative fiscal impact on the DOH, however, the agency can absorb this impact within existing resources.

The bill provides an effective date of July 1, 2022, except as otherwise provided.

II. Present Situation:

Targeted Outreach for Pregnant Women

The Targeted Outreach for Pregnant Women Act (TOPWA) was enacted by the Florida Legislature in 1998. The TOPWA program is designed to establish targeted outreach to high-risk pregnant women who may not be receiving proper prenatal care, who suffer from substance abuse problems, or who may be infected with the human immunodeficiency virus (HIV). The goal of the program is to provide these high-risk pregnant women with referrals for information and services.

In 2019, there were 453 HIV-exposed births in Florida. While there were no known perinatal HIV transmissions in 2019, the Department of Health (DOH) does not have a definitive status on roughly 25 percent of the 453 HIV-exposed births.

Without proper care for both mother and newborn, each of these births risks vertical transmission. The TOPWA supports outreach programs aimed at preventing vertical HIV transmission and other health issues by linking high-risk pregnant women with services that can help them have healthier pregnancies and deliveries and can aid them in ensuring their newborn gets a healthy start.[1]

Many of the women targeted by TOPWA programs may not otherwise receive prenatal care or know their HIV status. In 2021, there were eight TOPWA programs in Florida.[2] The TOPWA programs, which are funded through General Revenue (GR) dollars and grant funds from the federal Centers for Disease Control and Prevention (CDC), provided services to 7,703 women from January 2016 to July 2020. Women living with HIV made up just under 10 percent of TOPWA program enrollments.[3]

If a pregnant woman tests positive for HIV, medical interventions and prevention, such as the following, can greatly reduce her risk of transmitting the virus to her baby during childbirth:
- Antiretroviral medication to the mother;
- Delivery by caesarian section;
- Avoiding breastfeeding; and
- Antiretroviral medication to the newborn.

The DOH has developed a GR-funded program, Baby Rxpress, which provides a six-week course of antiretroviral (ARV) medication to HIV-exposed newborns at no cost to the mother. In 2019, this program filled 304 prescriptions to 264 HIV-exposed newborns at a cost of $10,801.96, or $40.92 per baby.[4]

Special Needs Shelter Program

Section 381.0303, F.S., was enacted in 2000 to create the Special Needs Shelter Program to provide for the operation and closure of special needs shelters (shelters). The shelters are designed for persons with a physical impairment, mental impairment, cognitive impairment, or sensory disability who, during periods of evacuation or emergency, require sheltering assistance to have a safe and secure place to go during an emergency or disaster. In s. 381.0303(1), F.S., the Legislature designates the DOH, through its county health departments, as the lead agency for coordinating and recruiting health care practitioners to staff the shelters during emergencies or disasters.[5]

In s. 381.0303(2), F.S., the Legislature delineates the responsibilities for the shelters as follows:

[1] Section 381.0045(2), F.S.
[2] Florida Department of Health, Diseases and Conditions, AIDS, Prevention, *TOWPA Map*, available at http://www.floridahealth.gov/diseases-and-conditions/aids/prevention/_documents/topwa/TOPWAProviderMap2021.pdf (last visited Nov. 2, 2021).
[3] Department of Health, *Senate Bill 768 2022 Agency Legislative Bill Analysis* (July 23, 2021) (on file with the Senate Committee on Health Policy).
[4] *Id.*
[5] Section 381.0303(1), F.S.

- The DOH has the lead responsibility for coordinating local medical and health care providers, the American Red Cross, and other interested parties and in developing a plan for the staffing and medical management of the shelters;
- The DOH's local Children's Medical Services (CMS) offices have responsibility for the coordination of local medical and health care providers, the American Red Cross, and other interested parties in developing a plan for the staffing and medical management of the shelters;
- The county health departments, in conjunction with the local emergency management agencies, have lead responsibility for the coordination and recruitment of the health care practitioners to staff local shelters;
- Local emergency management agencies have responsibility for the designation and operation of the shelters during an emergency or disaster and the closure of the facilities following the event; and
- The local county health department, local CMS office, and local emergency management agency are jointly responsible for deciding who is responsible for the medical supervision in each shelter.[6]

According to the DOH, this shared lead responsibility between the DOH, through its local county health departments, and CMS, through its local offices was, in large part, due to the large local CMS workforce of health care practitioners with specialized training and experience in the provision of services for children with special needs. Through a series of program and organizational changes at the DOH, toward a more effective operation and cost savings, the CMS workforce has been reduced by more than 70 percent since 2018. Due to this change in the CMS workforce, the DOH advises that the CMS is unable to fulfill its responsibilities under s. 381.3030, F.S.[7]

Medical Marijuana

Amendment 2

On November 4, 2016, Amendment 2 was approved by the statewide electorate and established Art. X, s. 29 of the Florida Constitution. This section of the constitution became effective on January 3, 2017, and created several exemptions from criminal and civil liability for:

- Qualifying patients who medically use marijuana in compliance with the amendment;
- Physicians, solely for issuing physician certifications with reasonable care and in compliance with the amendment; and
- MMTCs and their agents and employees for actions or conduct under the amendment and in compliance with rules promulgated by the DOH.

[6] Section 381.0303(2), F.S.

[7] Department of Health, 2022 *Senate Bill 768 Fiscal Analysis* (July 23, 2021) (on file with the Senate Committee on Health Policy).

Implementation

Subsequently, the Legislature passed SB 8-A in Special Session A of 2017.[8] The bill revised the Compassionate Medical Cannabis Act of 2014[9] in s. 381.986, F.S., to implement Article X, section 29 of the State Constitution.

Testing Marijuana and Exemption from Criminal Offenses

Pursuant to s. 381.986(8)(11)d., F.S., the DOH may select a random sample from edibles available for purchase in an MMTC's DOH-approved dispensing facility for testing. The DOH must test the random samples for potency, safety for human consumption, and accuracy of Tetrahydrocannabinol (THC) and Cannabidiol (CBD) labeling.

MMTCs are required to recall all edibles, including all edibles made from the same batch of marijuana, which fail to meet potency requirements, which are unsafe for human consumption, or for which the labeling of the THC and CBD concentration is inaccurate.

Presently, the DOH and its employees are not expressly exempt from criminal prosecution under ss. 893.13, 893.135, and 893.147, F.S., when acquiring, possessing, testing, transporting, and disposing of marijuana and delivery devices under certain circumstances when acting within the scope of their duties.[10]

Additional Disclosure for Physician Licensure and Renewal

Section 456,039, F.S., requires each physician,[11] chiropractor, and podiatrist seeking initial licensure, or license renewal, in Florida, in addition to normal required licensure information, to submit the following to the DOH:

- Name of each medical school attended, including dates of attendance, graduation, and a description of all graduate medical education completed, except continuing education (CE) requirements;
- Name of each hospital where the applicant has privileges;
- Primary practice address;
- Specialty board certifications, if any;
- Date applicant began practicing medicine;
- Medical school faculty appointments currently held and whether the applicant has had the responsibility for graduate medical education within the past 10 years;
- Any criminal offenses, felony or misdemeanor, of which the applicant has been found guilty, regardless of whether adjudication was withheld, or to which the applicant has pled guilty or nolo contendere, including those committed in another jurisdiction which would constitute a felony or misdemeanor in Florida;

[8] Chapter 2017-232, Laws of Fla.
[9] Chapter 2014-157, Laws of Fla.
[10] Department of Health, *Senate Bill 1568 Fiscal Analysis* (Mar. 12, 2021) (on file with the Senate Committee on Health Policy).
[11] *See* ss. 458.345 and 459 021, F.S., Registered medical and osteopathic, residents are exempt from the requirement of 456.039, F.S.

- Any final professional disciplinary action within the previous 10 years in Florida or any other jurisdiction, or by any specialty board, similar national organization, licensed hospital, health maintenance organization, prepaid health clinic, ambulatory surgical center, or nursing home;
- Any claim or action for damages in Florida, in another jurisdiction or in a foreign country, for personal injury alleged to have been caused by error, omission, or negligence in the performance of licensee's professional services; and
- Fingerprints.

Any change in the above information must be updated within 45 days after the occurrence of an event or change in status that is required to be reported. The DOH compiles this information and submits it to the practitioner profile of the applicant.[12]

Educational Institution Accreditation

Each profession includes the requirement of completion of a program from a "regionally accredited" institution. The U.S. Department of Education issued a letter of guidance on February 26, 2020, specifying that final regulations published that year omit references to "regional" and "national" accreditation. The letter specifies, "Because the Department holds all accrediting agencies to the same standards, distinctions between regional and national accrediting agencies are unfounded." Provisions implemented in 34 C.F.R. § 602.32(d), relating to the recognition of accrediting agencies, will become effective January 1, 2021.[13]

Nursing

Licensure by Examination

Part I of ch. 464, F.S., the Nurse Practice Act, governs the licensure and regulation of nurses in Florida. Nurses are licensed by the DOH[14] and are regulated by the Board of Nursing (BON).[15] Currently, a person desiring to practice nursing in the state of Florida must obtain a Florida license by examination, endorsement[16]or have a multistate license.[17]

[12] Section 456.041, F.S.
[13] U.S. Department of Education, Office of the Under Secretary, *Final Accreditation and State Authorization Regulations,* February 26, 2020, (on file with the Senate Committee on Health Policy).
[14] Section 464.008, F.S.
[15] The BON is composed of 13 members appointed by the Governor and confirmed by the Senate who serve four-year terms. All members must be residents of the state. Seven members must be registered nurses who are representative of the diverse areas of practice within the nursing profession. Three members must be licensed practical nurses and three members must be laypersons. At least one member of the board must be 60 years of age or older. *See* Section 464.004, F.S.
[16] Section 464.009, F.S., provides the requirements for licensure by endorsement, and requires an applicant to submit an application and fee, passing a criminal background screening, and 1) Hold a valid license to practice professional or practical nursing in another state or territory of the United States which, when issued, met or exceeded those in Florida at that time; 2) Meet the requirements for licensure in Florida and having successfully completed an examination in another state which is substantially equivalent to the examination in Florida; or 3) Have actively practiced nursing in another state, jurisdiction, or territory of the United States for two of the preceding three years without having his or her license acted against by the licensing authority of any jurisdiction.
[17] Section 464.0095, F.S., A "Multistate license" is a license to practice as a registered nurse (RN) or a licensed practical/vocational nurse (LPN/VN) issued by another Nurse Licensure Compact state's licensing board which authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.

Applicants for licensure by examination as a registered nurse (RN) or licensed practical nurse (LPN) must, among other requirements:

- Graduate from an approved program or its equivalent as determined by the BON;[18]
- Submit an application to the DOH;
- Pay a fee;
- Submit information for a criminal background check;[19] and
- Pass the National Council Licensure Examination (NCLEX).[20]

Any applicant who fails the NCLEX three consecutive times, regardless of the jurisdiction where the examination is taken, must complete a board-approved remedial course before the applicant will be approved to re-take the NCLEX. After taking the remedial course, the applicant may be approved to retake the examination up to three additional times before the applicant must retake remediation. The applicant must apply for reexamination within six months after completion of remediation.[21]

If an applicant who graduates from an approved program does not take the licensure examination within six months after graduation, he or she must enroll in and successfully complete a BON-approved licensure examination preparatory course. The applicant is responsible for all costs associated with the course and may not use state or federal financial aid for such costs. The BON is directed to, by rule, establish guidelines for licensure examination preparatory courses.[22]

Disciplinary Actions

Once an individual is licensed to practice nursing in Florida, he or she has a professional responsibility to practice nursing at a minimum level of competency to ensure the safety of the public. The safe practice of nursing also requires that a nurse not commit any of the hundreds of acts that would constitute grounds for the denial of a license, disciplinary action, or even criminal prosecution, as set out under ss. 456.072(2), 464.0095, and 464.018, F.S.

Section 464.018(1)(c)-(e), F.S., as currently written, uses the modifying phrase, "regardless of adjudication;" but where the phrase is placed in subsections (c) and (d) verses subsection (e) has a significant impact on its application in law.

In s. 464.018(1)(e), F.S., the placement of the phrase, "regardless of adjudication," only applies to licensees "having been found guilty of," offenses listed in s. 435.04, F.S., or an offense of domestic violence under s. 741.20, F.S. "Regardless of adjudication" does not apply to those "entering a plea of guilty or nolo contendere to" listed offenses. This interpretation could result in those licensees entering a plea of nolo contendere or guilty and not being found guilty (i.e. adjudication is withheld), therefore not being subject to professional disciplinary action.

[18] Section 464.008(1)(c), F.S.
[19] Section 464.008(1)(b), F.S.
[20] Section 464.008(2), F.S.
[21] Section 464.008(3), F.S.
[22] Section 464.008 (4), F.S.

Midwifery

"Midwifery" is the practice of supervising the conduct of a normal labor and childbirth, with the informed consent of the parent; the practice of advising the parents as to the progress of the childbirth; and the practice of rendering prenatal and postpartal care.[23]

Chapter 467, F.S., is the Midwifery Practice Act. Any person who seeks to practice midwifery in Florida must be at least 21 years of age and be:

- Licensed under s. 464.012, F.S., as an Advanced Practice Registered Nurse (APRN) nurse midwife; or
- Licensed as a midwife under ch. 467, F.S.

Section 467.009, F.S., governs midwifery programs and education and training requirements which are a minimum of three years in an approved program. An applicant must have:

- A high school diploma or the equivalent.
- Taken at least three college-level credits such as math and English.

It is unclear under current law whether both a high school diploma and three college level credits are required for admission, or whether one or the other will satisfy the admission requirement.

Section 467.009, F.S., also requires a student midwife, during training, to undertake the care of 50 women in each of the prenatal, intrapartal, and postpartal periods, and observe an additional 25 women in the intrapartal period under the supervision of a preceptor, but the same women need not be seen through all periods. Prenatal, intrapartal, and postpartal periods are not defined, and the statute is unclear as to whether this requires 150 patients prenatal, intrapartal, and postpartal periods, or just 50 patients in any one of the three phases of pregnancy and delivery. The statute is also unclear as to whether the two references to intrapartal care and observation may be the same patient or require different patient contacts.

Section 467.009, F.S., uses the terms, "applicant" and "student midwife" interchangeably, which is inaccurate. These sections frame standards for admission, education, and clinical training in the context of student requirements. Preceptors direct, teach, supervise, and evaluate the learning experiences of the student midwife and may be physicians, licensed midwives, or a certified nurse midwife, who have a minimum of three years professional experience.[24] Persons with previous midwifery education, RNs, and LPNs may have a reduced training period, but in no case less than two years.

Chapter 467.009, F.S., does not include any provisions explicitly allowing a new midwifery program to be provisionally approved nor does it provide guidance to schools regarding the circumstances under which the DOH may rescind the approval of program.

Section 467.011, F.S., licensure by examination, requires the DOH to:

- Administer the licensure examination to test the proficiency of applicants in the core competencies required to practice midwifery as specified in s. 467.009, F.S.;

[23] Section 467.003(8), F.S.
[24] Section 467.003(12), F.S.

- Develop, publish, and make available to interested parties at a reasonable cost a bibliography and guide for the examination; and
- Issue a license to practice midwifery to an applicant who has graduated from an approved midwifery program, successfully completed the examination, and paid a licensure fee.

The DOH no longer administers midwifery examinations, and, pursuant to s. 456.017(c), F.S., the DOH has approved the use of a national examination for midwives seeking to become licensed.[25]

In lieu of examination, an applicant may apply for a license by endorsement based on verification that the applicant holds a current valid license to practice midwifery in another jurisdiction that has equivalent or more stringent licensure requirements than those in Florida.[26]

A midwife may accept and provide care only for those women who are expected to have a normal pregnancy, labor, and delivery and must ensure that:
- The patient has signed an informed consent form; and
- If the patient is delivering at home, the home is safe and hygienic.

The statute does not define "normal delivery," "low risk pregnancy," or "high risk pregnancy."

A midwife licensed under ch. 467, F.S., may administer the following:
- Prophylactic ophthalmic medication;
- Oxygen;
- Postpartum oxytocin;
- Vitamin K;
- Rho immune globulin (human); and
- Local anesthetic and other medications prescribed by a practitioner.[27]

A midwife's care of mothers and infants throughout the prenatal, intrapartal, and postpartal periods must be in conformity with the DOH rules and the health laws of Florida. The midwife must:
- Prepare a written plan of action with the family to ensure continuity of medical care throughout labor and delivery and to provide for immediate medical care if an emergency arises;
- Instruct the patient and family regarding the preparation of the environment and ensure availability of equipment and supplies needed for delivery and infant care;
- Instruct the patient in the hygiene of pregnancy and nutrition as it relates to prenatal care;
- Maintain equipment and supplies;
- Determine the progress of labor and, when birth is imminent, be immediately available until delivery is accomplished, and must:
    - Maintain a safe and hygienic environment;
    - Monitor the progress of labor and the status of the fetus;

[25] Department of Health, *Senate Bill 678 2022 Agency Legislative Bill Analysis -Midwifery* (July 23, 2021) (on file with the Senate Committee on Health Policy).
[26] Section 467.0125, F.S.
[27] Section 467.015, F.S.

  - Recognize early signs of distress or complications; and
  - Enact the written emergency plan when indicated;
- Remain with the postpartal mother until the conditions of the mother and the neonate are stabilized; and
- Instill into each eye of the newborn infant a prophylactic in accordance with s. 383.04, F.S.

Section 467.0125, F.S., also includes provisions for licensure by endorsement and temporary certification of a midwife who is qualifying for endorsement to practice in an area of critical need. This statute defines the term "area of critical need" differently from every other profession which has a temporary certification that allows practice in an area of critical need. In addition, the current provisions for temporary certification of midwives require revocation if the area in which they practice loses its designation as an area of critical need.

Section 467.205, F.S., provides that any accredited or state-licensed institution of higher learning, public or private, may provide midwifery education and training. The statute sets out the DOH approval requirements for programs desiring to conduct an approved midwifery education program. Under the application and recertification process:

- The applicant must submit evidence of the program's compliance with the requirements in s. 467.009, F.S.
- The DOH must survey the organization applying for approval. If the DOH is satisfied that the program meets the requirements of s. 467.009, F.S., it must approve the program.
- The DOH must certify whether each approved midwifery program complies with the standards developed under s. 467.009, F.S., at least every three years.
  - If the DOH finds that an approved program no longer meets the required standards, it may place the program on probation until such time as the standards are restored.
  - If a program fails to correct these conditions within a specified period of time, the DOH may rescind the approval.
  - Any program having its approval rescinded has the right to reapply.
- Provisional approval of a new program may be granted pending the licensure results of the first graduating class.[28]

Practice of Orthotics, Prosthetics, and Pedorthics

The practice of orthotics, prosthetics, and pedorthics is governed by part XIV of ch. 468, F.S., and all three professions evaluate, measure, design, fabricate, assemble, fit, adjust, service, or provide the initial training necessary to accomplish the fitting of an orthosis or pedorthic device.[29]

Section 468.803, F.S., provides minimum qualifications for licensure to practice orthotics, prosthetics, and pedorthics. An applicant must be 18 years of age or older and must:

- Submit an application and fee;
- Submit fingerprint forms and the cost of the state and national criminal background checks;
- Be of good moral character;

[28] Section 467.205, F.S.
[29] Section 468.80, F.S.

- Have completed a one year residency or internship in orthotics or prosthetics approved by the Board of Orthotists and Prosthetists (BOAP); and
- Meet the following degree requirements to take the appropriate BOAP-approved examination:
  - *Orthoptist*: A bachelor of science or higher-level postgraduate degree in orthotics and prosthetics from a regionally accredited college or university, or a bachelor's degree with a certificate in orthotics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the BOAP.
  - *Prosthetist:* A bachelor of science or higher-level postgraduate degree in orthotics and prosthetics from a regionally accredited college or university, or a bachelor's degree with a certificate in prosthetics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the BOAP; and
- Pass the BOAP-approved examination.

Clinical Lab Personnel

Part I of ch. 483, F.S., regulates clinical laboratory personnel. "Clinical laboratory personnel" includes a clinical laboratory director, supervisor, technologist, blood gas analyst, or technician who performs or is responsible for laboratory test procedures, but the term does not include trainees, persons who perform screening for blood banks or plasmapheresis centers, phlebotomists, or persons employed by a clinical laboratory to perform manual pretesting duties or clerical, personnel, or other administrative responsibilities.[30]

Section 483.824(2), F.S., requires that the doctoral degree held by a clinical laboratory director must be from a regionally-accredited institution in a chemical, physical, or biological science.

Psychologists

Chapter 490, F.S., regulates the practice of psychology by psychologists. A psychologist is a person licensed by examination under s. 490.005(1), F.S., or endorsement under s. 490.006, F.S.

Section 490.003. F.S., defines a "doctoral-level psychological education" and "doctoral degree in psychology" as of July 1, 1999, to include a Psy.D., an Ed.D. in psychology, or a Ph.D. in psychology from a psychology program at an educational institution that, at the time the applicant was enrolled and graduated:

- Had institutional accreditation from an agency recognized and approved by the U.S. Department of Education or was recognized as a member in good standing with the Association of Universities and Colleges of Canada; and
- Had programmatic accreditation from the American Psychological Association (APA).

Section 490.005, F.S., provides that any person desiring to be licensed by examination as a psychologist must apply to the DOH to take the licensure examination. The DOH will license each applicant who the Board of Psychology (BOP) certifies has:

- Completed an application and submitted a fee;

[30] Section 483.803(4), F.S.

- Submitted proof satisfactory to the BOP that the applicant has received:
  - Doctoral-level psychological education; or
  - The equivalent of a doctoral-level psychological education from a program at a school or university located outside the U.S.;
- Had at least two years or 4,000 hours of experience in the field of psychology; and
- Passed the licensing examination.

Section 490.0051, F.S., also requires the DOH to issue a provisional psychology license to each applicant who the BOP certifies has:
- Completed the application form and paid the fee;
- Earned a doctoral degree in psychology as defined in s. 490.003(3); and
- Met any additional requirements established by BOP rule.

Provisional licensees must practice under the supervision of a licensed psychologist until the provisional licensee receives a license or a letter from the DOH stating that he or she is licensed as a psychologist. A provisional license expires 24 months after the date it is issued and may not be renewed or reissued.

Mental Health Professionals

Section 491.005, F.S., sets out the educational and examination requirements for a clinical social worker, marriage and family therapist, and mental health counselor to obtain a license by examination in Florida. An individual applying for licensure by examination who has satisfied the clinical experience requirements of s. 491.005, F.S., or an individual applying for licensure by endorsement pursuant to s. 491.006, F.S., intending to provide clinical social work, marriage and family therapy, or mental health counseling services in Florida, while satisfying coursework or examination requirements for licensure, must obtain a provisional license in the profession for which he or she is seeking licensure prior to beginning practice.[31]

An individual who has not satisfied the postgraduate or post-master's level of experience requirements under s. 491.005, F.S., must register as an intern in the profession for which he or she is seeking licensure before commencing the post-master's experience requirement. An individual who intends to satisfy part of the required graduate-level practicum, internship, or field experience outside the academic arena, must register as an intern in the profession for which he or she is seeking licensure before commencing the practicum, internship, or field experience.[32]

Clinical Social Workers

Section 491.005(1), F.S., relates to licensure by examination for clinical social workers. The DOH must issue a license to an applicant as a clinical social worker if the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (Board) certifies that the applicant:
- Has submitted an application and appropriate fees;

[31] Section 491.0046, F.S.
[32] Section 491.0045, F.S.

- Has earned a doctoral degree in social work from a graduate school of social work accredited by an accrediting agency recognized by the U.S. Department of Education, or a master's degree in social work from a graduate school of social work which:
  - Was accredited by the Council on Social Work Education (CSWE);
  - Was accredited by the Canadian Association of Schools of Social Work (CASSW); or
  - Has been determined to be an equivalent program to programs approved by the CSWE by the Foreign Equivalency Determination Service of the CSWE;
  - Completed all of the following coursework:
    - A supervised field placement during which the applicant provided clinical services directly to clients; and
    - Twenty-four semester hours or 32 quarter hours in theory of human behavior and practice methods as courses in clinically oriented services, with a minimum of one course in psychopathology and no more than one course in research;
- Has completed at least two post graduate years of clinical social work experience under the supervision of a licensed clinical social worker or the equivalent supervisor as determined by the Board;[33]
- Has passed a theory and practice examination; and
- Demonstrates, in a manner designated by Board rule, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

Marriage and Family Therapists

Section 491.005(3), F.S., relates to licensure by examination for marriage and family therapists. The DOH must issue a license to an applicant as a marriage and family therapist if the Board certifies that the applicant has:

- Submitted an application and appropriate fee;
- A minimum of a master's degree with major emphasis in marriage and family therapy or a closely related field from a:
  - Program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (CAMFTE); or
  - Florida university program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP);
- Documentation of the completion of graduate courses approved by the Board;[34]
- Completed at least two years of clinical experience during which 50 percent of the applicant's clients were receiving marriage and family therapy services:
  - At the post-master's level; and
  - Under the supervision of a licensed marriage and family therapist with at least five years of experience, or the equivalent, and whom the Board determines is a qualified supervisor;

[33] Section 491.005(1)(c), F.S. An individual who intends to practice in Florida to satisfy clinical experience requirements must register with the DOH pursuant to s. 491.0045, F.S., before commencing practice.

[34] Section 491.005(3)(b), F.S. If the course title that appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant must provide additional documentation, including, but not limited to, a syllabus or catalog description published for the course.

- Passed a theory and practice examination provided by the DOH;[35]
- Demonstrated, in a manner designated by Board rule, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.[36]

The required master's degree must have been earned at an institution of higher education that, at the time the applicant graduated, was fully accredited by a regional accrediting body recognized by:

- The Commission on Recognition of Postsecondary Accreditation (CORPA);
- A member in good standing with the Association of Universities and Colleges of Canada; or
- An institution of higher education located outside the United States and Canada which, at the time the applicant attended and graduated, maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by a regional accrediting body recognized by the CORPA.[37]

The applicant has the burden of establishing that all above requirements for licensure are met.

An applicant who has a master's degree from a program that did not emphasize marriage and family therapy may complete the coursework requirement in an institution fully accredited by the CAMFTE, and recognized by the U.S. Department of Education.

To satisfy the clinical experience requirements, an individual who intends to practice in Florida must register with the DOH before he or she may commence practice.

A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting.

The DOH must issue a dual license to persons licensed as psychologists, clinical social workers, mental health counselors, and psychiatric advanced practice registered nurses, if the candidate has:

- A valid, active license for at least three years; and
- Passed the examination provided by the DOH for marriage and family therapy.

Mental Health Counselors

Section 491.005(4), F.S., relates to licensure by examination for mental health counselors. Education and training in mental health counseling must have been received in an institution of higher education that, at the time the applicant graduated, was fully accredited by:

[35] *See* s. 491.004(5), F.S., and Fla. Admin. Code R. 64B4-3.003(2)(c) and 3, (2021). The DOH no longer provides the theory and practice examination for Marriage and Family Therapists. The examination used is the one developed by the Examination Advisory Committee of the Association of Marital and Family Therapy Regulatory Board (AMFTRB). The minimum passing score is established by that provider as well.
[36] *See* Fla. Admin. Code R. 64B4-3.0035, (2021).
[37] *Id.* Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train students to practice as professional marriage and family therapists or psychotherapists.

- A regional accrediting body recognized by the Council for Higher Education Accreditation (CHEA) or its successor;
- A publicly recognized member in good standing with the Association of Universities and Colleges of Canada; or
- An institution of higher education located outside the United States and Canada which, at the time the applicant was enrolled and at the time the applicant graduated, was officially recognized by the government of the country in which it is located as an institution or program, to train students to practice as mental health counselors that maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by a regional accrediting body recognized by the CHEA or its successor.

The DOH must issue a license to an applicant as a mental health counselor if the Board certifies that the applicant has:

- Submitted an application and appropriate fees;
- Earned a minimum of a master's degree from:
  - A mental health counseling program accredited by the CACREP[38] which includes clinical and didactic instruction, including courses in human sexuality and substance abuse; or
  - A non-CACREP accredited program related to the practice of mental health counseling, but with coursework and practicum, internship, or fieldwork that meet all of the following:
    - Thirty-three semester hours, or 44 quarter hours, which must include a minimum of three semester hours, or four quarter hours, of graduate-level coursework in 11 specified content areas;[39]or
    - A minimum of one graduate level course emphasizing the diagnostic processes, including differential diagnosis and the use of the current diagnostic tools, such as the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. The graduate program must have emphasized the common core curricular experience; or
    - An equivalent program to the two previously described options, as determined by the Board, including at least 700 hours of university-sponsored supervised clinical practicum, internship, or field work, that includes at least 280 hours of direct client services, as required by the CACREP accrediting standards for mental health counseling programs. This experience may not be used to satisfy the post-master's clinical experience requirement;

[38] Council for Accreditation of Counseling & Related Educational Programs, *2016 CACREP Standards*, *available at* http://www.cacrep.org/wp-content/uploads/2018/05/2016-Standards-with-Glossary-5.3.2018.pdf (last visited Nov. 20, 2021).
[39] *See* s. 491.005(4)(b)1.a., F.S. The graduate course work must include the following 11 content areas: counseling theories and practice; human growth and development; diagnosis and treatment of psychopathology; human sexuality; group theories and practice; individual evaluation and assessment; career and lifestyle assessment; research and program evaluation; social and cultural foundations; substance abuse; and legal, ethical, and professional standards issues in the practice of mental health counseling. Courses in research, thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement.

- Had at least two years of clinical experience in mental health counseling, which must be at the post-master's level under the supervision of a licensed mental health counselor or the equivalent who is a Board qualified supervisor;[40]
- Passed a theory and practice examination provided by the DOH;[41] and
- Demonstrated, in a manner designated by Board rule, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.[42]

Beginning July 1, 2025, an applicant for mental health counseling licensure must have a master's degree from a program that is accredited by the CACREP which consists of at least 60 semester hours or 80 quarter hours.

A licensed mental health professional is required to be on the premises when clinical services are provided by a registered intern in a private practice setting. Section 491.005, F. S., contains the same provision for registered clinical social worker interns.

Recent Legislative History of Section 491.005, F.S.

The current program accreditation and licensure requirements in s. 491.005, F.S., for social workers, marriage and family therapists and mental health counselors were enacted during the 2020 legislative session.

As of July 1, 2020, an applicant seeking licensure under current s. 491.005(4), F.S., as a mental health counselor was required to have a master's degree from a program accredited by the CACREP beginning July 1, 2025. Until July 1, 2025, mental health counseling students in programs related to the practice of mental health counseling that were not accredited by the CACREP could still obtain a license as a mental health counselor by satisfying the additional statutory requirements in s. 491.005(4), F.S., which required coursework and practicum, internship, or fieldwork consisting of at least 60 semester hours or 80 quarter hours and meeting other specific requirements. This window of time also gave those non-CACREP accredited programs time to apply for and obtain CACREP accreditation.

However, for marriage and family therapy licensure candidates, the current s. 491.005(3), F.S., contains no similar window of time for students to obtain licensure, or programs to obtain

[40] Section 491.005(4), F.S., An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045, F.S., before commencing practice. If a graduate has a master's degree with a major related to the practice of mental health counseling which did not include all the coursework required under sub-subparagraphs (b)1.a. and b., credit for the post-master's level clinical experience may not commence until the applicant has completed a minimum of seven of the courses required under sub-subparagraphs (b)1.a. and b., as determined by the Board, one of which must be a course in psychopathology or abnormal psychology. A doctoral internship may be applied toward the clinical experience requirement.

[41] *See* s. 491.004(5), F.S., and Fla. Admin Code R. 64B4-3.003(2)(b) and 3, (2021). The DOH no longer provides the theory and practice examination for mental health counselors. The examination used is the National Clinical Mental Health Counseling Examination (NCMHCE), clinical simulation examination developed by the National Board for Certified Counselors (NBCC). Applicants for licensure by endorsement may use the National Counselor Examination for Licensure and Certification (NCE) if the exam was taken prior to the year 2000. The minimum passing score is established by the test provider.

[42] Fla. Admin. Code R. 64B4-3.0035, (2021).

CAMFTE or CACREP accreditation. On July 1, 2020, students who had satisfied the previous requirements of s. 491.005(3), F.S., for licensure in programs not accredited by the CAMFTE, or who were in a Florida program not accredited by the CACREP, became immediately unable to obtain a license to practice marriage and family therapy without seeking a variance from the Board.

Currently, there are six universities in Florida with a marriage and family program that are not accredited by either the COAMFTE or CACREP. They are: Carlos Albizu, Jacksonville University, Palm Beach Atlantic University, St. Thomas University, University of Miami, and University of Phoenix. As a result, students who are presently enrolled in a marriage and family program at one of the specified universities will not meet minimum requirements for Florida licensure upon graduation, although the programs did meet the requirements at the time of the student's enrollment.[43]

Regional Accreditation

The minimum qualifications for licensure specified in s. 491.005(3), F.S., includes the requirement of completion of a graduate program from a "regionally accredited body recognized by the Commission on Recognition of Postsecondary Accreditation." The U.S. Department of Education issued a letter of guidance on February 26, 2020, specifying that final regulations published that year omit references to "regional" and "national" accreditation. The letter specifies, "Because the Department holds all accrediting agencies to the same standards, distinctions between regional and national accrediting agencies are unfounded." Provisions implemented in 34 C.F.R. s. 602.32(d), relating to the recognition of accrediting agencies, will become effective January 1, 2021.[44]

Department Examination

The DOH has discontinued the practice of conducting examinations or purchasing examinations for licensure. Applicants are presently responsible for coordinating the completion of an examination with an approved vendor and submitting passing scores to the applicable board to meet minimum qualifications. Current statutory references to the DOH collecting fees for examinations or conducting examinations is not consistent with current practice.[45]

Florida Birth-Related Neurological Injury Compensation Association (NICA)

In 1988, the Florida Legislature created the Florida Birth-Related Neurological Injury Compensation Association (NICA), to provide compensation, long-term medical care, and other services to persons with birth-related neurological injuries.[46] If an infant suffers such an injury, and the physician participates in NICA and delivers obstetrical services in connection with the

[43] Department of Health, *Senate Bill 768 2022 Agency Legislative Bill Analysis - Mental Health Professionals* (July 23, 2021) (on file with the Senate Committee on Health Policy.)
[44] *Id.*
[45] *Id.*
[46] Chapter 88-1, ss. 60-75, Laws of Fla., was enacted by the Legislature to stabilize and reduce malpractice insurance premiums for physicians practicing obstetrics. The intent of the Legislature is to provide compensation, on a no-fault basis, for a limited class of high costs catastrophic injuries, specifically birth-related neurological injuries, that result in unusually high costs for custodial care and rehabilitation. Section 766.301, F.S.

birth, then an administrative award for a compensable injury is the infant's sole and exclusive remedy for the injury, with exceptions.[47] Although the benefits paid under the Florida Birth-Related Neurological Injury Compensation Plan (the Plan) are limited, the Plan does not require the claimant to prove malpractice and provides a streamlined administrative hearing process to resolve the claim.[48]

A "birth-related neurological injury" is an injury to the brain or spinal cord of a live infant who weighs at least 2,500 grams for a single gestation or, in the case of a multiple gestation, a live infant who weighs at least 2,000 grams at birth caused by oxygen deprivation or by mechanical injury occurring in the course of labor, delivery, or resuscitation in the immediate post-delivery period in a hospital.[49] Such an injury addressed by this statute renders the infant permanently and substantially mentally and physically impaired.[50]

The NICA is an independent association, and was created by the Legislature to manage the Plan. Although it is not a state agency, NICA is subject to regulation and oversight by the Office of Insurance Regulation (OIR) and the Joint Legislative Auditing Committee. Directors on the NICA's board are appointed by the Chief Financial Officer for staggered terms of three years or until their successor is appointed, but there is no limit on the number of terms a director may serve.[51] The five-member board of directors of NICA administers the Plan.[52] The board of directors is composed of:

- One citizen representative;
- One representative of participating physicians;
- One representative of hospitals;
- One representative of casualty insurers; and
- One representative of physicians other than participating physicians.[53]

The duties of the NICA board of directors include:

- Administering the Plan;
- Administering the funds collected on behalf of the Plan;
- Reviewing and paying claims;
- Directing the investment and reinvestment of any surplus funds over losses and expenses, provided that any investment income generated thereby remains credited to the Plan;
- Reinsuring the risks of the Plan in whole or in part;
- Suing and being sued, appearing and defending, in all actions and proceedings in its name;
- Exercising all powers necessary or convenient to effect any or all of the purposes for which the Plan was created;
- Entering into such contracts as are necessary or proper to administer the Plan;
- Employing or retaining such persons as are necessary to perform the administrative and financial transactions and responsibilities of the Plan;

[47] Section 766.31(1), F.S.
[48] See *Florida Birth-Related Neurological Injury Compensation Ass'n v. McKaughan*, 668 So.2d 974, 977 (Fla. 1996).
[49] Section 766.302(2), F.S.
[50] *Id.*
[51] Section 766.315, F.S., and ch. 88-1, s. 74, Laws of Fla.
[52] Sections 766.315(1) and (2), F.S.
[53] Section 766.315, F.S., and ch. 88-1, s. 74, Laws of Fla.

- Taking such legal action as may be necessary to avoid payment of improper claims; and
- Indemnifying any person acting on behalf of the Plan in an official capacity, provided that such person acted in good faith.[54]

Annually, the NICA must furnish audited financial reports to:
- Any Plan participant upon request;
- The OIR; and
- The Joint Legislative Auditing Committee.[55]

The reports must be prepared in accordance with accepted accounting procedures. The OIR or the Joint Legislative Auditing Committee may conduct an audit of the Plan at any time.[56]

Rare Disease Advisory Council

Section 20.03, F.S., defines an advisory council as an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives. Section 20.052, F.S., requires that each advisory council established may be created only when it is found to be necessary and beneficial to the furtherance of a public purpose, and such a council must be terminated by the Legislature when it is no longer necessary.[57] An advisory body may not be created unless:
- It meets a statutorily defined purpose;
- Its powers and responsibilities conform with the definitions for governmental units in s. 20.03, F.S.;
- Its members, unless expressly provided otherwise in the State Constitution, are appointed for four-year staggered terms; and
- Its members, unless expressly provided otherwise by specific statutory enactment, serve without additional compensation or honorarium, and are authorized to receive only per diem and reimbursement for travel expenses as provided in s. 112.061, F.S.

The section also requires that:
- The private citizen members of an advisory body that is adjunct to an executive agency must be appointed by the Governor, the head of the department, the executive director of the department, or a Cabinet officer.
- Unless an exemption is otherwise specifically provided by law, all meetings of an advisory body, commission, board of trustees, or other collegial body adjunct to an executive agency are public meetings under s. 286.011, F.S. Minutes, including a record of all votes cast, must be maintained for all meetings.
- If an advisory body, commission, board of trustees, or other collegial body that is adjunct to an executive agency is abolished, its records must be appropriately stored, within 30 days after the effective date of its abolition, by the executive agency to which it was adjunct, and

[54] Section 766.315(4), F.S.
[55] Section 766.315(5)(e), F.S.
[56] *Id*.
[57] The agency to which an advisory body is adjunct must advise the Legislature at the time the advisory body ceases to be essential to the furtherance of a public purpose.

any property assigned to it must be reclaimed by the executive agency. The advisory body, commission, board of trustees, or other collegial body may not perform any activities after the effective date of its abolition.

The Rare Disease Advisory Council was established in ch. 2021-122, L.O.F.[58], creating s. 381.99 F.S.[59] The Council is created adjunct to the DOH for the purpose of providing recommendations on ways to improve health outcomes for individuals with rare diseases. The bill defines a rare disease as a disease that affects fewer than 200,000 people in the United States.

The advisory council is composed of the following members:[60]
The Governor is required to appoint members to the Council as follows:

- A representative of the Department of Health.
- A representative of the Agency for Health Care Administration.
- A representative of the Office of Insurance Regulation.
- A representative of the Department of Education.
- One geneticist practicing in this state.
- One registered nurse or advanced practice registered nurse who is licensed and practicing in this state with experience treating rare diseases.
- One hospital administrator from a hospital in this state that provides care to individuals diagnosed with rare diseases.
- A pharmacist who is licensed and practicing in this state who has experience with drugs that are used to treat rare diseases.
- A representative of the biotechnology industry.
- A representative of health insurance companies.

The President of the Senate is required to appoint members to the Council as follows:

- A representative from an academic research institution in this state which receives grant funding for research regarding rare diseases.
- A physician who is licensed under chapter 458 or chapter 459 and practicing in this state with experience in treating rare diseases.
- An individual who is 18 years of age or older who has a rare disease.
- An individual who is a caregiver of an individual with a rare disease.

A representative of an organization operating in this state which provides care or other support to individuals with rare disease.

The Speaker of the House of Representatives is required to appoint members to the Council as follows:

- A representative from an academic research institution in this state which receives grant funding for research regarding rare diseases.
- A physician who is licensed under chapter 458 or chapter 459 and practicing in this state with experience in treating rare diseases.
- An individual who is 18 years of age or older who has a rare disease.

[58] Chapter 2021-122
[59] Section 381.99, F.S.
[60] Section 381.99(2), F.S.

- An individual who is a caregiver of an individual with a rare disease.
- A representative of an organization operating in this state which provides care or other support to individuals with rare disease.

Members of the Council must be appointed by September 1, 2021, and are appointed for four-year terms except that Governor's appointees are initially appointed to a two-year term to stagger the appointments. The Council is required to hold its initial meeting by October 1, 2021, and may meet upon the call of the chair or upon the request of the majority of its members thereafter. The Council is authorized to meet electronically.

Healthy Start

Healthy Start is a free home visiting program that provides education and care coordination to pregnant women and families of children under the age of three. The goal of the program is to lower risk factors associated with preterm birth, low birth weight, infant mortality and poor developmental outcomes.[61]

Responsibility for coordination of Healthy Start resides with the local Healthy Start Coalitions. There are currently 33 coalitions, organized as non-profit agencies which serve all 67 counties.[62] The coalitions are overseen by the DOH.

In 2001, the Agency for Health Care Administration (AHCA), in collaboration with the DOH and the Healthy Start Coalition Association, developed a 1915(b) waiver to provide additional funds for Healthy Start services in order to increase the state's capacity to improve maternal and child health outcomes. The waiver, known as MomCare, was approved, and beginning July 1, 2001, Healthy Start services became eligible for Medicaid reimbursement for pregnant women and children up to age three who are enrolled in Medicaid.[63]

In 2011, the Legislature directed the AHCA to contract with an administrative services organization representing all Healthy Start Coalitions in order to continue the MomCare waiver services of care coordination, and other services. All managed care plans were also required to contract with the Healthy Start Coalitions in their regions in order to coordinate services provided to pregnant women and infants.[64]

Healthy Start MomCare Network

The Healthy Start MomCare Network, Inc. (MomCare) is an administrative service organization representing all Healthy Start Coalitions under the provisions of s. 409.975(4)(a), F.S. MomCare is tasked with implementing services provided to Medicaid recipients during pregnancy and after delivery, and contracts with the AHCA and the coalitions to establish specific programs and

[61] Department of Health (DOH), *Healthy Start, available at* http://www.floridahealth.gov/programs-and-services/childrens-health/healthy-start/index.html (last visited February 28, 2022).
[62] Florida Association of Healthy Start Coalitions, *Healthy Start Health Plan Contact List, available at* https://www.healthystartflorida.com/wp-content/uploads/2021/01/HS-CONNECT-REFFERAL-AND-COORDINATION-CONTACT-INFORMATION-Update-12-2-20.pdf (last visited Mar. 22, 2021).
[63] DOH, *Healthy Start Standards and Guidelines, available at* http://www.floridahealth.gov/programs-and-services/childrens-health/healthy-start/_documents/chapter-1-the-healthy-start-system-2008.pdf (last visited Mar. 22, 2021).
[64] Chapter 2011-134, s. 16, Laws of Fla.

procedures to improve pregnancy outcomes and infant health among Medicaid recipients. In addition, MomCare coordinates with managed care plans in providing care for Healthy Start participants.[65]

NICA Funding

The initial funding for the Plan is derived from an appropriation of $20 million by the Legislature at the time the Plan was created[66] and annual assessments paid by physicians and hospitals.[67] A participating physician is required to pay a $5,000 fee each year for coverage which runs January 1 through December 31.[68] All licensed Florida physicians pay a mandatory fee of $250, regardless of specialty. Hospitals pay $50 for each live birth during the previous calendar year. Certain exemptions apply to all of these categories, including resident physicians, retired physicians, government physicians, and facilities.[69] In 2019, NICA collected $26,989,960 in hospital and physician assessments. In 2020, NICA collected $27,000,000.[70]

Section 766.314, F.S., requires the OIR to maintain a $20 million reserve in the Insurance Regulatory Trust Fund. If the assessments collected and the appropriation of funds provided by ch. 88-277, s. 41, Laws of Florida, to the Plan from the trust fund are insufficient to maintain the Plan on an actuarially sound basis, the OIR is authorized to transfer an additional amount up to $20 million to the NICA from the Insurance Regulatory Trust Fund reserve.[71]

Obsolete Statutory References and Provisions

Currently, s. 766.314, F.S., contains numerous references to the Department of Business and Professional Regulation (DBPR) as the agency housing the Florida Board of Medicine and the Florida Board of Osteopathic Medicine. All medical boards were moved to the DOH in the early 2000s. The DOH accepted all of the responsibilities in this statute when the boards moved; however, the statute still indicates that these functions should be performed by the DBPR. In addition, the statute contains obsolete language related to how the initial NICA assessment was collected in 1988. This language is no longer needed.

"Following Year" Assessments

The statute requires the DBPR to collect the initial NICA assessment (fee) from all applicants. The statute also requires that if a license is being issued between October 1 and December 31, the DBPR is to collect the fee for the following year.

Currently, the DOH is not collecting the "following year" fees from individuals licensed during the specified period. Every licensee pays the initial NICA assessment (ranging from $0 to $5,000) at the time of application. The "following year" fees have been collected directly by

[65] Florida Healthy Start, *Healthy Start MomCare Network, available at* https://www.healthystartflorida.com/about-us/healthy-start-momcare-network/ (last visited Mar. 21, 2021).
[66] Section 766.314(5)(b), F.S.
[67] Section 766.314, F.S.
[68] *Id.*
[69] *Id.*
[70] Turner Consulting, Inc., *Proposed Increase in Parental Award – Section 766.31 (1) (b) (1), Florida Statutes* (Jan. 14, 2020).
[71] Section 766.314(5)(b), F.S.

NICA since the boards were moved to the DOH. NICA requires fees to be paid by January 31 of the calendar year.

Data Sharing with NICA

The statute requires the DBPR to provide a listing in a computer-readable format of the names and addresses of physicians licensed under chs. 458 and 459, F.S., as often "as determined to be necessary."

Currently, the DOH provides NICA with a list of newly licensed physicians each month, including their license numbers, the date they were licensed, and the fees collected. Any additional information that NICA may need can be downloaded from the DOH's website. This coincides with the transfer of those fees collected by the DOH to NICA, allowing NICA to reconcile the amount received with the fees listed in the monthly report.

III. Effect of Proposed Changes:

Targeted Outreach for Pregnant Women

The bill amends s. 381.0045, F.S., to:

- Add pregnant women who are suffering from mental health problems to the list of outreach targets;
- Encourage high risk pregnant women to get tested for other sexually transmissible diseases, as well as human immunodeficiency virus (HIV), per the Department of Health (DOH) rule;
- Provide pregnant women with information on:
  - The need for antiretroviral medications, deleting reference to a single type of antiretroviral (AZT), for themselves and their newborn; and
  - How to access antiretroviral medications after discharge from the hospital;
- Link women to mental health services; and
- Require additional follow up for HIV-exposed newborns to determine final HIV status and ensure continued linkages to care, if needed.

Special Needs Shelters

The bill amends s. 381.0303, F.S., and removes Children's Medical Services (CMS) from responsibility for coordinating local medical and health care providers, the American Red Cross, and other interested parties in developing a plan for the staffing and medical management of pediatric special needs shelters. The bill instead specifies that the DOH has the sole lead-agency responsibility in the coordination of local medical and health care providers for the staffing and management of pediatric special needs shelters and is the decision-making authority for determining the medical supervision in each special needs shelter. Under the bill, the DOH will no longer share that duty with CMS.

Medical Marijuana Sampling and Testing

The bill amends s. 381.986, F.S., related to the medical use of marijuana to:

- Allow the DOH to collect samples of marijuana and marijuana delivery devices from a medical marijuana treatment center (MMTC) for specified testing. Currently, the DOH may only collect samples of edibles;
- Expand MMTC recall requirements to all marijuana products and delivery devices, rather than only edibles; and Provide an exception from criminal laws for the DOH employees to acquire, possess, test, transport, and lawfully dispose of marijuana and marijuana delivery devices; and
- Allows an MMTC applicant that applies for the MMTC license reserved for a class member of Pigford v. Glickman or In Re Black Farmers Litigation to transfer its application fee to one subsequent opportunity to apply for licensure as an MMTC if that applicant is determined through the application process to be a member of the Pigford v. Glickman or In Re Black Farmers Litigation and is not awarded that license.

Additional Disclosure Requirement for Physician Licensure and Renewal

The bill amends s. 456.039, F.S., requiring each physician seeking licensure, or license renewal, under chs, 458 or 459, F.S., to provide, in addition to the other requirements, proof of payment of the Neurological Injury Compensation Association (NICA) assessment required under s. 766.314, F.S., if applicable.

Chiropractic Licensure

The bill amends s. 460.406, F.S., to delete references to the term "regional" and replaces it with the term "institutional" to conform with the U.S. Department of Education accreditation nomenclature for approving educational institutions.

Nursing Licensure and Disciplinary Actions

The bill amend s. 464.008, F.S., and deletes the requirement that graduates from an approved nursing program who do not take the licensure examination within six months after graduation, must successfully complete and pay for a board-approved licensure examination preparatory course.

The bill also amends s. 464.018(1)(e), F.S., and moves the placement of the phrase, "regardless of adjudication," after the phrase "[h]aving been found guilty of, or entered a plea of nolo contendere or guilty to", to clarify that "regardless of adjudication" does not apply only to guilty pleas but to any plea to offenses listed in ss. 435.04, F.S., or 741.28, F.S.

Midwifery

The bill amends s. 467.003(12) to clearly define "preceptor" in the midwifery education process. Specifically, the bill provides that a preceptor may not supervise an individual as a midwifery student unless the student has been enrolled in an approved midwifery program.

The bill defines "prelicensure course" to mean a course of study, offered by an accredited midwifery program and approved by the DOH, which an applicant for licensure must complete before a license may be issued, and which provides instruction in the laws and rules of Florida

and demonstrates the student's competency to practice midwifery. The bill clarifies language to promote consistency in terminology and that midwifery programs must incorporate all required standards, guidelines, and education objectives.

The bill also clarifies that both a high school diploma or the equivalent and three college-level credits in math and English or demonstration of competency in communication and computation may be required for admission to a midwifery program. The bill amends s. 467.009, F.S., and requires, for the accreditation and approval of midwifery programs, that a program's clinical training must include all of the following:

- Care for 50 women in each of the prenatal, intrapartal, and postpartal periods under the supervision of a preceptor;
- Observation of an additional 25 women in the intrapartal period before qualifying for a license;
- Training in a hospital or alternate birth settings or both; and
- Assessment and differentiation between a high-risk and low-risk pregnancy.

The bill amends s. 467.011, F.S., to require the following for the issuance of a midwifery license:

- Application and fee;
- Graduation from:
  - An accredited and approved midwifery program;
  - A medical or midwifery program offered in another jurisdiction whose graduation requirements were equivalent to or exceeded those required in Florida;
  - Completion of a prelicensure course offered by an accredited and approved midwifery program; and
  - A passing score on the examination specified by the DOH.

The bill amends s. 467.0125, F.S, to repeal the abbreviated oral examination to determine the applicant's competency without a written examination for temporary certificates and clarifies the criteria for obtaining a license by endorsement and temporary certificate to practice in areas of critical need. The bill does not specifically define "areas of critical need" for temporary certificates but requires the applicant to:

- Specify that he or she will only practice in one or more of the following areas:
  - A county health department;
  - A correctional facility;
  - A U.S. Department of Veterans' Affairs clinic;
  - A community health center funded by s. 329, s. 330, or s. 340 of the United States Public Health Service Act;
  - Any other agency or institution that is approved by the state Surgeon General that provides health care to meet the needs of an underserved populations in this state; or
  - Areas of critical need determined by the state Surgeon General, which areas include, but are not be limited to, health professional shortage areas designated by the U.S. Department of Health and Human Services.
- Practice only under the supervision of a physician, an Advanced Practice Registered Nurse (APRN) certified nurse midwife or a midwife licensed under ch. 467, F.S., who has a minimum of three years professional experience; and

- Voluntarily relinquish the temporary certificate, or report a new practice area of critical need to the DOH, if his or her current practice area ceases to be an area of critical need.

The bill amends s. 467.205, F.S., to update the DOH's approval process of midwifery programs to allow such programs to be provisionally approved for five years. This conforms to the five-year period provisional licensure period the Florida Department of Education's Commission for Independent Education uses when seeking accreditation status. For private institutions, the bill adds to the Council for Higher Education Accreditation (CHEA), an accrediting agency approved by the U.S. Department of Education, as an institutional accrediting agency for direct-entry midwifery education programs and its licensing or provisional licensing by the Commission for Independent Education. The DOH will be able to give provisional approval to a new program that has met all requirements except for showing its students have an 80-percent passage rate on the national exam. Programs provisionally approved will have five years to demonstrate the required exam approval rate after they are preliminary approved.

The bill requires the DOH to certify every three years whether each approved midwifery program is compliant and has maintained compliance with the requirements of s. 467.009, F.S., or has lost its accreditation status. The DOH must provide its finding to the program in writing and may place the program on probationary status for a specified period of time, not to exceed three years. If a program on probationary status does not come into compliance or regain its accreditation status within the specified time, the DOH may rescind the program's approval.

Practice of Orthotics, Prosthetics, and Pedorthics

The bill amends part XIV of ch. 468, F.S., to reflect current procedures for applicants to obtain a criminal history check and the method of transmission to the DOH for review. The DOH no longer collects fingerprint forms or fees from applicants to process the initial criminal history check for licensure. Applicants are required to complete fingerprinting electronically through independent vendors and provide an originating agency identifier number specific to the profession for the results to be submitted to the DOH. If a criminal history is indicated, the BOAP will review the application for consideration of licensure.[72]

The bill also amends the educational requirements for orthotists and prosthetists. The orthoptist and prosthetists acceptable bachelor of science or higher-level postgraduate degree in orthotics and prosthetics from an accredited college or university must now also specifically be recognized by the Commission on Accreditation of Allied Health Education Programs.

The bill deletes references to the term "regionally accredited" and replaces it with the term "institutionally accredited" or simply references the programmatic accrediting body to conform with the U.S. Department of Education accreditation nomenclature for approving educational institutions.[73]

[72] Department of Health, *Senate Bill 768 Fiscal Analysis - Practice of Orthotics, Prosthetics, and Pedorthics* (July 23, 2021) (on file with the Senate Committee on Health Policy).
[73] Department of Health, *Senate Bill 768 2022 Agency Legislative Bill Analysis - Practice of Orthotics, Prosthetics, and Pedorthics* (July 23, 2021) (on file with the Senate Committee on Health Policy).

Clinical Lab Personnel

The bill amends s. 483.824(2), F.S., to delete the reference to the term "regionally" and replace it with "institutionally" in regard to the accredited institution at which a clinical laboratory director is required to have earned a doctoral degree in a chemical, physical, or biological science.

Psychologists

The bill amends ss. 490.003, 490.005, and 490.0051, F.S., to clarify definitions and the educational requirements for psychologists applying for licensure by examination or provisional licensure.

The bill defines a "doctoral degree from an APA accredited program" as a Psy.D., an Ed.D. in psychology, or a Ph.D. in psychology from a psychology program at an educational institution that, at the time the applicant was enrolled and graduated had both an institutional accreditation from an agency recognized and approved by the U.S. Department of Education or was recognized as a member in good standing with the Association of Universities and Colleges of Canada, and had programmatic accreditation from the American Psychological Association (APA).

The bill further defines "doctoral degree in psychology" as a Psy.D., an Ed.D. in psychology, or a Ph.D. in psychology from a psychology program at an educational institution that, at the time the applicant was enrolled and graduated, had institutional accreditation from an agency recognized and approved by the U.S. Department of Education or was recognized as a member in good standing with the Association of Universities and Colleges of Canada.

The bill requires psychologists applying for licensure to have obtained a doctoral degree from:
- An APA accredited program; or
- The equivalent of a degree from an APA-accredited program from a school or university located outside the United States which was officially recognized by the government of the country in which it is located as an institution or program to train students to practice professional psychology.

Provisional licensure applicants must have earned a degree from an APA accredited program. Lack of a degree from an APA-accredited program would be grounds for denial of licensure under the bill.

Mental Health Professionals

The bill amends s. 491.005, F.S., effective upon the bill becoming law, to create three pathways to licensure for applicants for a marriage and family therapy license to meet the minimum educational requirements by one of the following methods:
- A minimum of a master's degree in marriage and family therapy from a college or university that is accredited by the Commission on Accreditation for Marriage and Family Therapy Education (CAMFTE);

- A minimum of a master's degree with an emphasis in marriage and family therapy from a college or university that is accredited by the Council on Accreditation of Counseling and Related Educational Programs (CACREP) and graduate courses approved by the board; or
- A minimum of a master's degree with an emphasis in marriage and family therapy or a closely related field, with a degree conferred before September 1, 2027, from an institutionally accredited college or university.

The bill updates the education requirements for marriage and family therapists, including current law's obsolete reference to accreditation by Commission on Recognition of Postsecondary Accreditation (CORPA), which was dissolved in 1997. The bill replaces the CORPA with the CHEA or its successors.

The bill deletes references to the term "regional" in s. 491.005(3), F.S., and replaces it with the term "institutional" to conform to the U.S. Department of Education accreditation nomenclature for approving educational institutions and deletes obsolete statutory references to the DOH collecting fees for examinations or conducting examinations.

Rare Disease Advisory Council

The bill amends s. 381.99, F.S., revising the membership requirement for the Rare Disease Advisory Council to include two individuals who are caregivers for individuals with a rare disease instead of one individual as appointed by both the President of the Senate and the Speaker of the House of Representatives.

Healthy Start Coalitions

The bill amends s. 383.216, F.S., authorizing the administrative services organization representing all Healthy Start Coalitions under s. 409.975(4) to use any method of telecommunication to conduct meetings for any authorized function, provided that the public is given proper notice of and reasonable access to the meeting.

Florida Birth-Related Neurological Injury Compensation Association (NICA)

The bill amends s. 766.314, F.S., deleting references to the Department of Business and Professional Regulation (DBPR) and revising the frequency and content of certain reports which the DOH must submit to the NICA. The bill eliminates unnecessary and obsolete language regarding the initial fees collected in 1988.

The bill deletes obsolete language and updates provisions to conform to current law. The bill authorizes the NICA to enforce the collection of physician assessments in circuit court under certain circumstances and requires the NICA to notify the DOH and the appropriate regulatory board of any unpaid final judgments against a physician within seven days of the issuance of a final judgment.

The bill updates the provisions regarding data sharing with the NICA to reflect current DOH practice and requires the DOH to continue providing NICA with an electronic monthly report of

physicians licensed in the previous month, including their license numbers, the date they were licensed, and the fees collected.

The bill amends s. 766.31, F.S., revising the eligibility requirements for parents or legal guardians who received an award under the Florida Birth-Related Neurological Injury Compensation Plan before January 1, 2021, to eliminate the requirement that the child must be currently receiving benefits under the plan to receive the award. The bill requires the plan to make retroactive payments in a lump sum or in periodic payments as designated by the parents or legal guardians by July 1, 2022, to eligible parents or legal guardians.

The bill provides an effective date of July 1, 2022, except as otherwise provided.

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 Department of Health (DOH) indicates it will experience a non-recurring workload increase associated with updating online applications and websites; limited costs associated with rule making; limited costs associated with updating licensure databases

and the License and Enforcement System; and minimal costs associated with testing from medical marijuana treatment centers (MMTCs). According to the DOH, current resources are adequate to absorb these costs.[74]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.0045, 381.0303, 381.986, 381.99, 383.216, 456.039, 460.406, 464.008, 464.018, 467.003, 467.009, 467.011, 467.0125, 467.205, 468.803, 483.824, 490.003, 490.005, 490.0051, 491.005, 766.31, and 766.314.

IX. Additional Information:

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

CS/CS by Appropriations on February 28, 2022:
The committee substitute:

- Revises the membership requirement for the Rare Disease Advisory Council to include two individuals who are caregivers for individuals with a rare disease instead of one individual as appointed by both the President of the Senate and the Speaker of the House of Representatives;
- The bill revises the eligibility requirements for parents or legal guardians who received an award under the Florida Birth-Related Neurological Injury Compensation Plan before January 1, 2021, to eliminate the requirement that the child must be currently receiving benefits under the plan to receive the award. The bill requires the plan to make retroactive payments in a lump sum or in periodic payments as designated by the parents or legal guardians by July 1, 2022, to eligible parents or legal guardians;
- The bill authorizes the administrative services organization representing all Healthy Start Coalitions under s. 409.9075(4), to use any method of telecommunication to conduct meetings for any authorized function, provided that the public is given proper notice of and reasonable access to the meeting; and
- Allows an MMTC applicant that applies for the MMTC license reserved for a class member of Pigford v. Glickman or In Re Black Farmers Litigation to transfer its initial application fee to one subsequent opportunity to apply for licensure as an MMTC if that applicant is determined through the application process to be a member

[74] Department of Health, *Senate Bill 768 2022 Agency Legislative Bill Analysis- Practice of Orthotics, Prosthetics, and Pedorthics* (July 23, 2021) (on file with the Senate Committee on Health Policy)

of the Pigford v. Glickman or In Re Black Farmers Litigation and is not awarded that license.

CS by Health Policy on January 26, 2022:
The CS:

- Removes the underlying bill's provisions relating to emergency medical services;
- Requires allopathic and osteopathic physicians who apply to the DOH for Florida licensure to provide proof of payment of any NICA assessments, as applicable;
- Requires NICA to inform the DOH and the applicable regulatory board of an unpaid final judgment against a physician within seven days of the final judgment;
- Removes authority granted by the underlying bill for counseling interns to provide services via telehealth under certain conditions; and
- Makes technical corrections to the underlying bill's provisions relating to practitioner education requirements for numerous practitioner types.

B. Amendments:

None.

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

134610

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2022	.	
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The Committee on Appropriations (Rouson) recommended the following:

Senate Amendment (with title amendment)

Between lines 139 and 140
insert:

Section 3. Effective upon this act becoming a law, paragraph (a) of subsection (8) of section 381.986, Florida Statutes, is amended to read:

381.986 Medical use of marijuana.—

(8) MEDICAL MARIJUANA TREATMENT CENTERS.—

(a) The department shall license medical marijuana



treatment centers to ensure reasonable statewide accessibility and availability as necessary for qualified patients registered in the medical marijuana use registry and who are issued a physician certification under this section.

1. As soon as practicable, but no later than July 3, 2017, the department shall license as a medical marijuana treatment center any entity that holds an active, unrestricted license to cultivate, process, transport, and dispense low-THC cannabis, medical cannabis, and cannabis delivery devices, under former s. 381.986, Florida Statutes 2016, before July 1, 2017, and which meets the requirements of this section. In addition to the authority granted under this section, these entities are authorized to dispense low-THC cannabis, medical cannabis, and cannabis delivery devices ordered pursuant to former s. 381.986, Florida Statutes 2016, which were entered into the compassionate use registry before July 1, 2017, and are authorized to begin dispensing marijuana under this section on July 3, 2017. The department may grant variances from the representations made in such an entity’s original application for approval under former s. 381.986, Florida Statutes 2014, pursuant to paragraph (e).

2. The department shall license as medical marijuana treatment centers 10 applicants that meet the requirements of this section, under the following parameters:

a. As soon as practicable, but no later than August 1, 2017, the department shall license any applicant whose application was reviewed, evaluated, and scored by the department and which was denied a dispensing organization license by the department under former s. 381.986, Florida Statutes 2014; which had one or more administrative or judicial



challenges pending as of January 1, 2017, or had a final ranking within one point of the highest final ranking in its region under former s. 381.986, Florida Statutes 2014; which meets the requirements of this section; and which provides documentation to the department that it has the existing infrastructure and technical and technological ability to begin cultivating marijuana within 30 days after registration as a medical marijuana treatment center.

b. As soon as practicable, the department shall license one applicant that is a recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011). An applicant licensed under this sub-subparagraph is exempt from the requirement of subparagraph (b)2. An applicant that applies for licensure under this sub-subparagraph, pays its initial application fee, is determined by the department through the application process to qualify as a recognized class member, and is not awarded a license under this sub-subparagraph may transfer its initial application fee to one subsequent opportunity to apply for licensure under subparagraph 4.

c. As soon as practicable, but no later than October 3, 2017, the department shall license applicants that meet the requirements of this section in sufficient numbers to result in 10 total licenses issued under this subparagraph, while accounting for the number of licenses issued under sub-subparagraphs a. and b.

3. For up to two of the licenses issued under subparagraph 2., the department shall give preference to applicants that demonstrate in their applications that they own one or more

134610

facilities that are, or were, used for the canning, concentrating, or otherwise processing of citrus fruit or citrus molasses and will use or convert the facility or facilities for the processing of marijuana.

4. Within 6 months after the registration of 100,000 active qualified patients in the medical marijuana use registry, the department shall license four additional medical marijuana treatment centers that meet the requirements of this section. Thereafter, the department shall license four medical marijuana treatment centers within 6 months after the registration of each additional 100,000 active qualified patients in the medical marijuana use registry that meet the requirements of this section.

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

And the title is amended as follows:

Delete line 19

and insert:

shelters; amending s. 381.986, F.S.; authorizing certain applicants for medical marijuana treatment center licenses to transfer their initial application fee to one subsequent opportunity to apply for licensure under certain circumstances; authorizing the

910204

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/01/2022	.	
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The Committee on Appropriations (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Delete lines 140 - 155
and insert:
Section 3. Present paragraphs (d) through (o) of subsection (1) and present paragraphs (e) through (h) of subsection (14) of section 381.986, Florida Statutes, are redesignated as paragraphs (e) through (p) of subsection (1) and paragraphs (f) through (i) of subsection (14), respectively, a new paragraph (d) is added to subsection (1) and a new paragraph (e) is added

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to subsection (14), and paragraphs (a) and (c) of subsection (3) and paragraph (e) of subsection (8) of that section are amended, to read:

381.986 Medical use of marijuana.—

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

(d) "Dispense" means the act of selling, delivering, or otherwise transferring marijuana or a marijuana delivery device to a patient or caregiver.

(3) QUALIFIED PHYSICIANS AND MEDICAL DIRECTORS.—

(a) Before being approved as a qualified physician~~, as defined in paragraph (1)(m),~~ and before each license renewal, a physician must successfully complete a 2-hour course and subsequent examination offered by the Florida Medical Association or the Florida Osteopathic Medical Association which encompass the requirements of this section and any rules adopted hereunder. The course and examination shall be administered at least annually and may be offered in a distance learning format, including an electronic, online format that is available upon request. The price of the course may not exceed $500. A physician who has met the physician education requirements of former s. 381.986(4), Florida Statutes 2016, before June 23, 2017, shall be deemed to be in compliance with this paragraph from June 23, 2017, until 90 days after the course and examination required by this paragraph become available.

(c) Before being employed as a medical director~~, as defined in paragraph (1)(i),~~ and before each license renewal, a medical director must successfully complete a 2-hour course and subsequent examination offered by the Florida Medical Association or the Florida Osteopathic Medical Association which

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encompass the requirements of this section and any rules adopted hereunder. The course and examination shall be administered at least annually and may be offered in a distance learning format, including an electronic, online format that is available upon request. The price of the course may not exceed $500.

(8) MEDICAL MARIJUANA TREATMENT CENTERS.—

(e) A licensed medical marijuana treatment center shall cultivate, process, transport, and dispense marijuana for medical use. A licensed medical marijuana treatment center may not contract for services directly related to the cultivation, processing, and dispensing of marijuana or marijuana delivery devices, except that a medical marijuana treatment center licensed pursuant to subparagraph (a)1. may contract with a single entity for the cultivation, processing, transporting, and dispensing of marijuana and marijuana delivery devices and may contract for services to assist the licensed medical marijuana treatment center with receiving and managing orders for marijuana or marijuana delivery devices so long as the actual dispensing is completed by the licensed medical marijuana treatment center. A

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

And the title is amended as follows:

Delete line 19

and insert:

shelters; amending s. 381.986, F.S.; defining the term "dispense"; authorizing licensed medical marijuana treatment centers to contract for services to assist with receiving and managing orders for marijuana and

910204

marijuana delivery devices under certain circumstances; authorizing the

313234

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/01/2022	.	
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The Committee on Appropriations (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Delete lines 305 - 327

and insert:

department rule. The department may ~~select a random~~ sample marijuana from any medical marijuana treatment center ~~edibles available for purchase in a dispensing~~ facility which shall be tested by the department to determine whether ~~that~~ the edible meets the potency requirements of this section, whether the marijuana is safe for human consumption, and whether the edible

313234

labeling of the tetrahydrocannabinol and cannabidiol concentration is accurate. The department may also compare the marijuana labeling of tetrahydrocannabinol and cannabidiol concentration to the testing laboratory results and may sample marijuana delivery devices from a dispensing facility to determine whether the marijuana delivery devices are functioning in accordance with the specifications provided to, and approved by, the department. A medical marijuana treatment center may not require payment from the department for the sample. If ordered by the department, a medical marijuana treatment center must recall all edibles, including all edibles made from the same batch of marijuana, which fail to meet the potency requirements of this section, which are unsafe for human consumption, or for which the labeling of the tetrahydrocannabinol and cannabidiol concentration is inaccurate; recall all other marijuana from the same batch of marijuana tested which is unsafe for human consumption; and recall all marijuana delivery devices determined to not be functioning in accordance with the specifications provided to, and approved by, the department. At any time before marijuana is dispensed to qualified patients or caregivers, the medical marijuana treatment center may correct the labeled potency to display accurate concentrations. By October 1, 2022, the department shall establish by rule an expedited process for retesting samples of marijuana and marijuana delivery devices before ordering a recall, a process for notifying patients of dispensed marijuana if the concentration labeling differs from the laboratory testing results, and a process for randomly auditing and inspecting testing laboratories to ensure accurate marijuana testing

313234

results. The medical marijuana treatment

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

And the title is amended as follows:

Delete lines 20 - 28

and insert:

department to sample marijuana from medical marijuana treatment center facilities for certain testing; authorizing the department to sample marijuana delivery devices from dispensing facilities to determine whether such devices are functioning in accordance with approved specifications; requiring medical marijuana treatment centers to recall marijuana and marijuana delivery devices, rather than only edibles, under certain circumstances; authorizing medical marijuana treatment centers to correct the potency labeling on marijuana at any time before dispensing; requiring the department to establish certain processes by rule by a specified date; exempting the department and

361620

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2022	.	
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The Committee on Appropriations (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Between lines 456 and 457
insert:

Section 4. Subsection (9) of section 383.216, Florida Statutes, is amended to read:

383.216 Community-based prenatal and infant health care.—

(9) Local prenatal and infant health care coalitions shall incorporate as not-for-profit corporations for the purpose of seeking and receiving grants from federal, state, and local

361620

government and other contributors. However, a coalition need not be designated as a tax-exempt organization under s. 501(c)(3) of the Internal Revenue Code. The administrative services organization representing all Healthy Start Coalitions under s. 409.975(4) may use any method of telecommunication to conduct meetings for any authorized function, provided that the public is given proper notice of and reasonable access to the meeting.

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

And the title is amended as follows:

Delete line 32

and insert:

certain circumstances; amending s. 383.216, F.S.; authorizing the organization representing all Healthy Start Coalitions to use any method of telecommunication to conduct meetings under certain circumstances; amending s. 456.039, F.S.;

603264

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2022	.	
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	.	

The Committee on Appropriations (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Between lines 1494 and 1495
insert:

Section 19. Effective upon this act becoming a law, paragraph (d) of subsection (1) of section 766.31, Florida Statutes, is amended to read:

766.31 Administrative law judge awards for birth-related neurological injuries; notice of award.—

(1) Upon determining that an infant has sustained a birth-

603264

related neurological injury and that obstetrical services were delivered by a participating physician at the birth, the administrative law judge shall make an award providing compensation for the following items relative to such injury:

(d)1.a. Periodic payments of an award to the parents or legal guardians of the infant found to have sustained a birth-related neurological injury, which award may not exceed $100,000. However, at the discretion of the administrative law judge, such award may be made in a lump sum. Beginning on January 1, 2021, the award may not exceed $250,000, and each January 1 thereafter, the maximum award authorized under this paragraph shall increase by 3 percent.

b. Parents or legal guardians who received an award pursuant to this section before January 1, 2021, ~~and whose child currently receives benefits under the plan~~ must receive a retroactive payment in an amount sufficient to bring the total award paid to the parents or legal guardians pursuant to sub-subparagraph a. to $250,000. This additional payment may be made in a lump sum or in periodic payments as designated by the parents or legal guardians and must be paid by July 1, 2021.

2.a. Death benefit for the infant in an amount of $50,000.

b. Parents or legal guardians who received an award pursuant to this section, and whose child died since the inception of the program, must receive a retroactive payment in an amount sufficient to bring the total award paid to the parents or legal guardians pursuant to sub-subparagraph a. to $50,000. This additional payment may be made in a lump sum or in periodic payments as designated by the parents or legal guardians and must be paid by July 1, 2021.

603264

Should there be a final determination of compensability, and the claimants accept an award under this section, the claimants are ~~shall~~ not ~~be~~ liable for any expenses, including attorney ~~attorney's~~ fees, incurred in connection with the filing of a claim under ss. 766.301-766.316 other than those expenses awarded under this section.

Section 20. The amendment made to s. 766.31(1)(d)1.b., Florida Statutes, by this act applies retroactively. The Florida Birth-Related Neurological Injury Compensation Plan must provide the additional payment required under s. 766.31(1)(d)1.b., Florida Statutes, to parents and legal guardians who are eligible for the additional payment under that sub-subparagraph as a result of the amendment made by this act. The additional payment may be made in a lump sum or in periodic payments as designated by the parents or legal guardians and must be paid by July 1, 2022. This section shall take effect upon this act becoming a law.

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

And the title is amended as follows:

Between lines 66 and 67

insert:

amending s. 766.31, F.S.; revising eligibility requirements for certain retroactive payments to parents or legal guardians under the Florida Birth-Related Neurological Injury Compensation Plan; providing retroactive applicability; requiring the plan to make certain retroactive payments to eligible

603264

parents or guardians; authorizing the plan to make such payments in a lump sum or periodically as designated by eligible parents or legal guardians; requiring the plan to make the payments by a specified date;

209168

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2022	.	
	.	
	.	
	.	

The Committee on Appropriations (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Between lines 456 and 457
insert:

Section 4. Paragraphs (b) and (c) of subsection (2) of section 381.99, Florida Statutes, are amended to read:

381.99 Rare Disease Advisory Council.—

(2) The advisory council is composed of the following members:

(b) As appointed by the President of the Senate:

209168

1. A representative from an academic research institution in this state which receives grant funding for research regarding rare diseases.

2. A physician who is licensed under chapter 458 or chapter 459 and practicing in this state with experience in treating rare diseases.

3. An individual who is 18 years of age or older who has a rare disease.

4. Two individuals ~~An individual~~ who are caregivers for individuals ~~is a caregiver of an individual~~ with a rare disease.

5. A representative of an organization operating in this state which provides care or other support to individuals with rare diseases.

(c) As appointed by the Speaker of the House of Representatives:

1. A representative from an academic research institution in this state which receives grant funding for research regarding rare diseases.

2. A physician who is licensed under chapter 458 or chapter 459 and practicing in this state with experience in treating rare diseases.

3. An individual who is 18 years of age or older who has a rare disease.

4. Two individuals ~~An individual~~ who are caregivers for individuals ~~is a caregiver of an individual~~ with a rare disease.

5. A representative of organizations in this state which provide care or other support to individuals with rare diseases.

Any vacancy on the advisory council must be filled in the same

209168

manner as the original appointment.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 32
and insert:
certain circumstances; amending s. 381.99, F.S.; revising the membership of the Rare Disease Advisory Council; amending s. 456.039, F.S.;

709480

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/01/2022	.	
	.	
	.	
	.	

The Committee on Appropriations (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Between lines 641 and 642
insert:

Section 8. Paragraph (f) of subsection (11) of section 464.019, Florida Statutes, is amended to read:

464.019 Approval of nursing education programs.—

(11) ACCREDITATION REQUIRED.—

(f) An approved nursing education program may, no sooner than 90 days before the deadline for meeting the accreditation

709480

requirements of this subsection, apply to the board for an extension of the accreditation deadline for a period which does not exceed 3 ~~2~~ years. An additional extension may not be granted. In order to be eligible for the extension, the approved program must establish that it has a graduate passage rate of 60 percent or higher on the National Council of State Boards of Nursing Licensing Examination for the most recent calendar year and must meet a majority of the board's additional criteria, including, but not limited to, all of the following:

1. A student retention rate of 60 percent or higher for the most recent calendar year.

2. A graduate work placement rate of 70 percent or higher for the most recent calendar year.

3. The program has applied for approval or been approved by an institutional or programmatic accreditor recognized by the United States Department of Education.

4. The program is in full compliance with subsections (1) and (3) and paragraph (5)(b).

5. The program is not currently in its second year of probationary status under subsection (5).

The applicable deadline under this paragraph is tolled from the date on which an approved program applies for an extension until the date on which the board issues a decision on the requested extension.

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

And the title is amended as follows:

Between lines 41 and 42

709480

insert:

amending s. 464.019, F.S.; revising a provision relating to the accreditation of nursing education programs;

124218

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/01/2022	.	
	.	
	.	
	.	

The Committee on Appropriations (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Between lines 641 and 642
insert:

Section 8. Section 465.41, Florida Statutes, is created to read:

465.41 Distribution of compounded human drug products.—

(1) It is the intent of the Legislature to enhance communication and maximize federal and state resources for oversight of compounded drugs produced by traditional pharmacies

124218

and to enact an information sharing agreement with the federal Food and Drug Administration as a tool to monitor such drug products.

(2) On an annual basis, and within 90 days after the beginning of the calendar year, all licensees who ship compounded human drug products interstate shall report to the National Association of Boards of Pharmacy Information-Sharing Network the information required by the Memorandum of Understanding Addressing Certain Distributions of Compounded Human Drug Products between the department and the United States Food and Drug Administration as provided by the federal Food and Drug Administration. Licensees shall provide the information to the department promptly upon request. The board may adopt rules necessary to implement and administer this section.

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

And the title is amended as follows:

Between lines 41 and 42

insert:

creating s. 465.41, F.S.; providing legislative intent; providing reporting requirements for certain licensees who ship compounded human drug products interstate; authorizing the Board of Pharmacy to adopt rules;

By the Committee on Health Policy; and Senator Rodriguez

588-02346-22 2022768c1

A bill to be entitled

An act relating to the Department of Health; amending s. 381.0045, F.S.; revising the purpose of the department's targeted outreach program for certain pregnant women; requiring the department to encourage high-risk pregnant women of unknown status to be tested for sexually transmissible diseases; requiring the department to provide specified information to pregnant women who have human immunodeficiency virus (HIV); requiring the department to link women with mental health services when available; requiring the department to educate pregnant women who have HIV on certain information; requiring the department to provide, for a specified purpose, continued oversight of newborns exposed to HIV; amending s. 381.0303, F.S.; removing the Children's Medical Services office from parties required to coordinate in the development of local emergency management plans for special needs shelters; amending s. 381.986, F.S.; authorizing the department to select samples of marijuana from medical marijuana treatment center facilities for certain testing; authorizing the department to select samples of marijuana delivery devices from medical marijuana treatment centers to determine whether such devices are safe for use; requiring medical marijuana treatment centers to recall marijuana and marijuana delivery devices, instead of just edibles, under certain circumstances; exempting the department and its employees from criminal provisions if they

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

588-02346-22 2022768c1

acquire, possess, test, transport, or lawfully dispose of marijuana and marijuana delivery devices under certain circumstances; amending s. 456.039, F.S.; requiring certain applicants for licensure as physicians to provide specified documentation to the department at the time of application; amending s. 460.406, F.S.; revising provisions related to chiropractic physician licensing; amending s. 464.008, F.S.; deleting a requirement that certain nursing program graduates complete a specified preparatory course; amending s. 464.018, F.S.; revising grounds for disciplinary action against licensed nurses; amending s. 467.003, F.S.; revising and defining terms; amending s. 467.009, F.S.; revising provisions related to accredited and approved midwifery programs; amending s. 467.011, F.S.; revising requirements for licensure of midwives; amending s. 467.0125, F.S.; revising requirements for licensure by endorsement of midwives; revising requirements for temporary certificates to practice midwifery in this state; amending s. 467.205, F.S.; revising provisions relating to approval, continued monitoring, probationary status, provisional approval, and approval rescission of midwifery programs; amending s. 468.803, F.S.; revising provisions related to orthotist and prosthetist registration, examination, and licensing; amending s. 483.824, F.S.; revising educational requirements for clinical laboratory directors; amending s. 490.003, F.S.; defining the

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

terms "doctoral degree from an American Psychological Association accredited program" and "doctoral degree in psychology"; amending ss. 490.005 and 490.0051, F.S.; revising education requirements for psychologist licensure and provisional licensure, respectively; amending s. 491.005, F.S.; revising requirements for licensure of clinical social workers, marriage and family therapists, and mental health counselors; amending s. 766.314, F.S.; deleting obsolete language and updating provisions to conform to current law; revising the frequency with which the department must submit certain reports to the Florida Birth-Related Neurological Injury Compensation Association; revising the content of such reports; authorizing the association to enforce the collection of certain assessments in circuit court under certain circumstances; requiring the association to notify the department and the applicable regulatory board of any unpaid final judgment against a physician within a specified timeframe; providing effective dates.

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

Section 1. Subsections (2) and (3) of section 381.0045, Florida Statutes, are amended to read:

381.0045 Targeted outreach for pregnant women.—

(2) It is the purpose of this section to establish a targeted outreach program for high-risk pregnant women who may not seek proper prenatal care, who suffer from substance abuse

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

or mental health problems, or who have acquired ~~are infected with~~ human immunodeficiency virus (HIV), and to provide these women with links to much-needed ~~much needed~~ services and information.

(3) The department shall:

(a) Conduct outreach programs through contracts with, grants to, or other working relationships with persons or entities where the target population is likely to be found.

(b) Provide outreach that is peer-based, culturally sensitive, and performed in a nonjudgmental manner.

(c) Encourage high-risk pregnant women of unknown status to be tested for HIV and other sexually transmissible diseases as specified by department rule.

(d) Educate women not receiving prenatal care as to the benefits of such care.

(e) Provide ~~HIV-infected~~ pregnant women who have HIV with information on the need for antiretroviral medication for their newborn, their medication options, and how they can access the medication after their discharge from the hospital ~~so they can make an informed decision about the use of Zidovudine (AZT)~~.

(f) Link women with substance abuse treatment and mental health services, when available, and act as a liaison with Healthy Start coalitions, children's medical services, Ryan White-funded providers, and other services of the Department of Health.

(g) Educate pregnant women who have HIV on the importance of engaging in and continuing HIV care.

(h) Provide continued oversight of any newborn exposed to HIV to determine the newborn's final HIV status and ensure

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

continued linkage to care if the newborn is diagnosed with HIV ~~to HIV exposed newborns~~.

Section 2. Paragraphs (a) and (c) of subsection (2) of section 381.0303, Florida Statutes, are amended to read:

381.0303 Special needs shelters.—

(2) SPECIAL NEEDS SHELTER PLAN; STAFFING; STATE AGENCY ASSISTANCE.—If funds have been appropriated to support disaster coordinator positions in county health departments:

(a) The department shall assume lead responsibility for the coordination of local medical and health care providers, the American Red Cross, and other interested parties in developing a plan for the staffing and medical management of special needs shelters and~~. The local Children's Medical Services offices shall assume lead responsibility for the coordination of local medical and health care providers, the American Red Cross, and other interested parties in developing a plan for the staffing and medical management of~~ pediatric special needs shelters. Plans must conform to the local comprehensive emergency management plan.

(c) The appropriate county health department~~, Children's Medical Services office,~~ and local emergency management agency shall jointly decide who has responsibility for medical supervision in each special needs shelter.

Section 3. Present paragraphs (e) through (h) of subsection (14) of section 381.986, Florida Statutes, are redesignated as paragraphs (f) through (i), respectively, a new paragraph (e) is added to that subsection, and paragraph (e) of subsection (8) of that section is amended, to read:

381.986 Medical use of marijuana.—

(8) MEDICAL MARIJUANA TREATMENT CENTERS.—

(e) A licensed medical marijuana treatment center shall cultivate, process, transport, and dispense marijuana for medical use. A licensed medical marijuana treatment center may not contract for services directly related to the cultivation, processing, and dispensing of marijuana or marijuana delivery devices, except that a medical marijuana treatment center licensed pursuant to subparagraph (a)1. may contract with a single entity for the cultivation, processing, transporting, and dispensing of marijuana and marijuana delivery devices. A licensed medical marijuana treatment center must, at all times, maintain compliance with the criteria demonstrated and representations made in the initial application and the criteria established in this subsection. Upon request, the department may grant a medical marijuana treatment center a variance from the representations made in the initial application. Consideration of such a request shall be based upon the individual facts and circumstances surrounding the request. A variance may not be granted unless the requesting medical marijuana treatment center can demonstrate to the department that it has a proposed alternative to the specific representation made in its application which fulfills the same or a similar purpose as the specific representation in a way that the department can reasonably determine will not be a lower standard than the specific representation in the application. A variance may not be granted from the requirements in subparagraph 2. and subparagraphs (b)1. and 2.

1. A licensed medical marijuana treatment center may transfer ownership to an individual or entity who meets the

requirements of this section. A publicly traded corporation or publicly traded company that meets the requirements of this section is not precluded from ownership of a medical marijuana treatment center. To accommodate a change in ownership:

a. The licensed medical marijuana treatment center shall notify the department in writing at least 60 days before the anticipated date of the change of ownership.

b. The individual or entity applying for initial licensure due to a change of ownership must submit an application that must be received by the department at least 60 days before the date of change of ownership.

c. Upon receipt of an application for a license, the department shall examine the application and, within 30 days after receipt, notify the applicant in writing of any apparent errors or omissions and request any additional information required.

d. Requested information omitted from an application for licensure must be filed with the department within 21 days after the department's request for omitted information or the application shall be deemed incomplete and shall be withdrawn from further consideration and the fees shall be forfeited.

e. Within 30 days after the receipt of a complete application, the department shall approve or deny the application.

2. A medical marijuana treatment center, and any individual or entity who directly or indirectly owns, controls, or holds with power to vote 5 percent or more of the voting shares of a medical marijuana treatment center, may not acquire direct or indirect ownership or control of any voting shares or other form

of ownership of any other medical marijuana treatment center.

3. A medical marijuana treatment center may not enter into any form of profit-sharing arrangement with the property owner or lessor of any of its facilities where cultivation, processing, storing, or dispensing of marijuana and marijuana delivery devices occurs.

4. All employees of a medical marijuana treatment center must be 21 years of age or older and have passed a background screening pursuant to subsection (9).

5. Each medical marijuana treatment center must adopt and enforce policies and procedures to ensure employees and volunteers receive training on the legal requirements to dispense marijuana to qualified patients.

6. When growing marijuana, a medical marijuana treatment center:

a. May use pesticides determined by the department, after consultation with the Department of Agriculture and Consumer Services, to be safely applied to plants intended for human consumption, but may not use pesticides designated as restricted-use pesticides pursuant to s. 487.042.

b. Must grow marijuana within an enclosed structure and in a room separate from any other plant.

c. Must inspect seeds and growing plants for plant pests that endanger or threaten the horticultural and agricultural interests of the state in accordance with chapter 581 and any rules adopted thereunder.

d. Must perform fumigation or treatment of plants, or remove and destroy infested or infected plants, in accordance with chapter 581 and any rules adopted thereunder.

7. Each medical marijuana treatment center must produce and make available for purchase at least one low-THC cannabis product.

8. A medical marijuana treatment center that produces edibles must hold a permit to operate as a food establishment pursuant to chapter 500, the Florida Food Safety Act, and must comply with all the requirements for food establishments pursuant to chapter 500 and any rules adopted thereunder. Edibles may not contain more than 200 milligrams of tetrahydrocannabinol, and a single serving portion of an edible may not exceed 10 milligrams of tetrahydrocannabinol. Edibles may have a potency variance of no greater than 15 percent. Edibles may not be attractive to children; be manufactured in the shape of humans, cartoons, or animals; be manufactured in a form that bears any reasonable resemblance to products available for consumption as commercially available candy; or contain any color additives. To discourage consumption of edibles by children, the department shall determine by rule any shapes, forms, and ingredients allowed and prohibited for edibles. Medical marijuana treatment centers may not begin processing or dispensing edibles until after the effective date of the rule. The department shall also adopt sanitation rules providing the standards and requirements for the storage, display, or dispensing of edibles.

9. Within 12 months after licensure, a medical marijuana treatment center must demonstrate to the department that all of its processing facilities have passed a Food Safety Good Manufacturing Practices, such as Global Food Safety Initiative or equivalent, inspection by a nationally accredited certifying

body. A medical marijuana treatment center must immediately stop processing at any facility which fails to pass this inspection until it demonstrates to the department that such facility has met this requirement.

10. A medical marijuana treatment center that produces prerolled marijuana cigarettes may not use wrapping paper made with tobacco or hemp.

11. When processing marijuana, a medical marijuana treatment center must:

a. Process the marijuana within an enclosed structure and in a room separate from other plants or products.

b. Comply with department rules when processing marijuana with hydrocarbon solvents or other solvents or gases exhibiting potential toxicity to humans. The department shall determine by rule the requirements for medical marijuana treatment centers to use such solvents or gases exhibiting potential toxicity to humans.

c. Comply with federal and state laws and regulations and department rules for solid and liquid wastes. The department shall determine by rule procedures for the storage, handling, transportation, management, and disposal of solid and liquid waste generated during marijuana production and processing. The Department of Environmental Protection shall assist the department in developing such rules.

d. Test the processed marijuana using a medical marijuana testing laboratory before it is dispensed. Results must be verified and signed by two medical marijuana treatment center employees. Before dispensing, the medical marijuana treatment center must determine that the test results indicate that low-

THC cannabis meets the definition of low-THC cannabis, the concentration of tetrahydrocannabinol meets the potency requirements of this section, the labeling of the concentration of tetrahydrocannabinol and cannabidiol is accurate, and all marijuana is safe for human consumption and free from contaminants that are unsafe for human consumption. The department shall determine by rule which contaminants must be tested for and the maximum levels of each contaminant which are safe for human consumption. The Department of Agriculture and Consumer Services shall assist the department in developing the testing requirements for contaminants that are unsafe for human consumption in edibles. The department shall also determine by rule the procedures for the treatment of marijuana that fails to meet the testing requirements of this section, s. 381.988, or department rule. The department may select samples of marijuana ~~a random sample~~ from ~~edibles available for purchase in~~ a medical marijuana treatment center ~~dispensing~~ facility which shall be tested by the department to determine whether ~~that~~ the marijuana ~~edible~~ meets the potency requirements of this section, is safe for human consumption, and is accurately labeled with ~~the labeling of~~ the tetrahydrocannabinol and cannabidiol concentration or to verify the result of marijuana testing conducted by a marijuana testing laboratory. The department may also select samples of marijuana delivery devices from a medical marijuana treatment center to determine whether the marijuana delivery device is safe for use by qualified patients ~~is accurate~~. A medical marijuana treatment center may not require payment from the department for the sample. A medical marijuana treatment center must recall marijuana ~~edibles~~, including all

marijuana and marijuana products ~~edibles~~ made from the same batch of marijuana, that fails ~~which fail~~ to meet the potency requirements of this section, that is ~~which are~~ unsafe for human consumption, or for which the labeling of the tetrahydrocannabinol and cannabidiol concentration is inaccurate. A medical marijuana treatment center must also recall all marijuana delivery devices determined to be unsafe for use by qualified patients. The medical marijuana treatment center must retain records of all testing and samples of each homogenous batch of marijuana for at least 9 months. The medical marijuana treatment center must contract with a marijuana testing laboratory to perform audits on the medical marijuana treatment center's standard operating procedures, testing records, and samples and provide the results to the department to confirm that the marijuana or low-THC cannabis meets the requirements of this section and that the marijuana or low-THC cannabis is safe for human consumption. A medical marijuana treatment center shall reserve two processed samples from each batch and retain such samples for at least 9 months for the purpose of such audits. A medical marijuana treatment center may use a laboratory that has not been certified by the department under s. 381.988 until such time as at least one laboratory holds the required certification, but in no event later than July 1, 2018.

e. Package the marijuana in compliance with the United States Poison Prevention Packaging Act of 1970, 15 U.S.C. ss. 1471 et seq.

f. Package the marijuana in a receptacle that has a firmly affixed and legible label stating the following information:

(I) The marijuana or low-THC cannabis meets the requirements of sub-subparagraph d.

(II) The name of the medical marijuana treatment center from which the marijuana originates.

(III) The batch number and harvest number from which the marijuana originates and the date dispensed.

(IV) The name of the physician who issued the physician certification.

(V) The name of the patient.

(VI) The product name, if applicable, and dosage form, including concentration of tetrahydrocannabinol and cannabidiol. The product name may not contain wording commonly associated with products marketed by or to children.

(VII) The recommended dose.

(VIII) A warning that it is illegal to transfer medical marijuana to another person.

(IX) A marijuana universal symbol developed by the department.

12. The medical marijuana treatment center shall include in each package a patient package insert with information on the specific product dispensed related to:

a. Clinical pharmacology.

b. Indications and use.

c. Dosage and administration.

d. Dosage forms and strengths.

e. Contraindications.

f. Warnings and precautions.

g. Adverse reactions.

13. In addition to the packaging and labeling requirements

specified in subparagraphs 11. and 12., marijuana in a form for smoking must be packaged in a sealed receptacle with a legible and prominent warning to keep away from children and a warning that states marijuana smoke contains carcinogens and may negatively affect health. Such receptacles for marijuana in a form for smoking must be plain, opaque, and white without depictions of the product or images other than the medical marijuana treatment center's department-approved logo and the marijuana universal symbol.

14. The department shall adopt rules to regulate the types, appearance, and labeling of marijuana delivery devices dispensed from a medical marijuana treatment center. The rules must require marijuana delivery devices to have an appearance consistent with medical use.

15. Each edible shall be individually sealed in plain, opaque wrapping marked only with the marijuana universal symbol. Where practical, each edible shall be marked with the marijuana universal symbol. In addition to the packaging and labeling requirements in subparagraphs 11. and 12., edible receptacles must be plain, opaque, and white without depictions of the product or images other than the medical marijuana treatment center's department-approved logo and the marijuana universal symbol. The receptacle must also include a list of all the edible's ingredients, storage instructions, an expiration date, a legible and prominent warning to keep away from children and pets, and a warning that the edible has not been produced or inspected pursuant to federal food safety laws.

16. When dispensing marijuana or a marijuana delivery device, a medical marijuana treatment center:

a. May dispense any active, valid order for low-THC cannabis, medical cannabis and cannabis delivery devices issued pursuant to former s. 381.986, Florida Statutes 2016, which was entered into the medical marijuana use registry before July 1, 2017.

b. May not dispense more than a 70-day supply of marijuana within any 70-day period to a qualified patient or caregiver. May not dispense more than one 35-day supply of marijuana in a form for smoking within any 35-day period to a qualified patient or caregiver. A 35-day supply of marijuana in a form for smoking may not exceed 2.5 ounces unless an exception to this amount is approved by the department pursuant to paragraph (4)(f).

c. Must have the medical marijuana treatment center's employee who dispenses the marijuana or a marijuana delivery device enter into the medical marijuana use registry his or her name or unique employee identifier.

d. Must verify that the qualified patient and the caregiver, if applicable, each have an active registration in the medical marijuana use registry and an active and valid medical marijuana use registry identification card, the amount and type of marijuana dispensed matches the physician certification in the medical marijuana use registry for that qualified patient, and the physician certification has not already been filled.

e. May not dispense marijuana to a qualified patient who is younger than 18 years of age. If the qualified patient is younger than 18 years of age, marijuana may only be dispensed to the qualified patient's caregiver.

f. May not dispense or sell any other type of cannabis,

alcohol, or illicit drug-related product, including pipes or wrapping papers made with tobacco or hemp, other than a marijuana delivery device required for the medical use of marijuana and which is specified in a physician certification.

g. Must, upon dispensing the marijuana or marijuana delivery device, record in the registry the date, time, quantity, and form of marijuana dispensed; the type of marijuana delivery device dispensed; and the name and medical marijuana use registry identification number of the qualified patient or caregiver to whom the marijuana delivery device was dispensed.

h. Must ensure that patient records are not visible to anyone other than the qualified patient, his or her caregiver, and authorized medical marijuana treatment center employees.

(14) EXCEPTIONS TO OTHER LAWS.—

(e) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other law, but subject to the requirements of this section, the department, including an employee of the department acting within the scope of his or her employment, may acquire, possess, test, transport, and lawfully dispose of marijuana and marijuana delivery devices as provided in this section, in s. 381.988, and by department rule.

Section 4. Subsection (1) of section 456.039, Florida Statutes, is amended to read:

456.039 Designated health care professionals; information required for licensure.—

(1) Each person who applies for initial licensure or license renewal as a physician under chapter 458, chapter 459, chapter 460, or chapter 461, except a person applying for registration pursuant to ss. 458.345 and 459.021, must furnish

the following information to the department~~,~~ at the time of application or~~, and each physician who applies for license renewal under chapter 458, chapter 459, chapter 460, or chapter 461, except a person registered pursuant to ss. 458.345 and 459.021, must,~~ in conjunction with the renewal of such license ~~and~~ under procedures adopted by the department ~~of Health,~~ and in addition to any other information that may be required from the applicant~~, furnish the following information to the Department of Health~~:

(a)1. The name of each medical school that the applicant has attended, with the dates of attendance and the date of graduation, and a description of all graduate medical education completed by the applicant, excluding any coursework taken to satisfy medical licensure continuing education requirements.

2. The name of each hospital at which the applicant has privileges.

3. The address at which the applicant will primarily conduct his or her practice.

4. Any certification that the applicant has received from a specialty board that is recognized by the board to which the applicant is applying.

5. The year that the applicant began practicing medicine.

6. Any appointment to the faculty of a medical school which the applicant currently holds and an indication as to whether the applicant has had the responsibility for graduate medical education within the most recent 10 years.

7. A description of any criminal offense of which the applicant has been found guilty, regardless of whether adjudication of guilt was withheld, or to which the applicant

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has pled guilty or nolo contendere. A criminal offense committed in another jurisdiction which would have been a felony or misdemeanor if committed in this state must be reported. If the applicant indicates that a criminal offense is under appeal and submits a copy of the notice for appeal of that criminal offense, the department must state that the criminal offense is under appeal if the criminal offense is reported in the applicant's profile. If the applicant indicates to the department that a criminal offense is under appeal, the applicant must, upon disposition of the appeal, submit to the department a copy of the final written order of disposition.

8. A description of any final disciplinary action taken within the previous 10 years against the applicant by the agency regulating the profession that the applicant is or has been licensed to practice, whether in this state or in any other jurisdiction, by a specialty board that is recognized by the American Board of Medical Specialties, the American Osteopathic Association, or a similar national organization, or by a licensed hospital, health maintenance organization, prepaid health clinic, ambulatory surgical center, or nursing home. Disciplinary action includes resignation from or nonrenewal of medical staff membership or the restriction of privileges at a licensed hospital, health maintenance organization, prepaid health clinic, ambulatory surgical center, or nursing home taken in lieu of or in settlement of a pending disciplinary case related to competence or character. If the applicant indicates that the disciplinary action is under appeal and submits a copy of the document initiating an appeal of the disciplinary action, the department must state that the disciplinary action is under

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appeal if the disciplinary action is reported in the applicant's profile.

9. Relevant professional qualifications as defined by the applicable board.

(b) In addition to the information required under paragraph (a), for each applicant seeking ~~who seeks~~ licensure under chapter 458, chapter 459, or chapter 461~~, and~~ who has practiced previously in this state or in another jurisdiction or a foreign country, ~~must provide~~ the information required of licensees under those chapters pursuant to s. 456.049. An applicant for licensure under chapter 460 who has practiced previously in this state or in another jurisdiction or a foreign country must provide the same information as is required of licensees under chapter 458, pursuant to s. 456.049.

(c) For each applicant seeking licensure under chapter 458 or chapter 459, proof of payment of the assessment required under s. 766.314, if applicable.

Section 5. Subsection (1) of section 460.406, Florida Statutes, is amended to read:

460.406 Licensure by examination.—

(1) Any person desiring to be licensed as a chiropractic physician must apply to the department to take the licensure examination. There shall be an application fee set by the board not to exceed $100 which shall be nonrefundable. There shall also be an examination fee not to exceed $500 plus the actual per applicant cost to the department for purchase of portions of the examination from the National Board of Chiropractic Examiners or a similar national organization, which may be refundable if the applicant is found ineligible to take the

examination. The department shall examine each applicant whom ~~who~~ the board certifies has met all of the following criteria:

(a) Completed the application form and remitted the appropriate fee.

(b) Submitted proof satisfactory to the department that he or she is not less than 18 years of age.

(c) Submitted proof satisfactory to the department that he or she is a graduate of a chiropractic college which is accredited by or has status with the Council on Chiropractic Education or its predecessor agency. However, any applicant who is a graduate of a chiropractic college that was initially accredited by the Council on Chiropractic Education in 1995, who graduated from such college within the 4 years immediately preceding such accreditation, and who is otherwise qualified is ~~shall be~~ eligible to take the examination. An ~~No~~ application for a license to practice chiropractic medicine may not ~~shall~~ be denied solely because the applicant is a graduate of a chiropractic college that subscribes to one philosophy of chiropractic medicine as distinguished from another.

(d)1. For an applicant who has matriculated in a chiropractic college before ~~prior to~~ July 2, 1990, completed at least 2 years of residence college work, consisting of a minimum of one-half the work acceptable for a bachelor's degree granted on the basis of a 4-year period of study, in a college or university accredited by an institutional accrediting agency recognized and approved by the United States Department of Education. However, before ~~prior to~~ being certified by the board to sit for the examination, each applicant who has matriculated in a chiropractic college after July 1, 1990, must ~~shall~~ have

been granted a bachelor's degree, based upon 4 academic years of study, by a college or university accredited by an institutional ~~a regional~~ accrediting agency that ~~which~~ is a member of the Commission on Recognition of Postsecondary Accreditation.

2. Effective July 1, 2000, completed, before ~~prior to~~ matriculation in a chiropractic college, at least 3 years of residence college work, consisting of a minimum of 90 semester hours leading to a bachelor's degree in a liberal arts college or university accredited by an institutional accrediting agency recognized and approved by the United States Department of Education. However, before ~~prior to~~ being certified by the board to sit for the examination, each applicant who has matriculated in a chiropractic college after July 1, 2000, must ~~shall~~ have been granted a bachelor's degree from an institution holding accreditation for that degree from an institutional ~~a regional~~ accrediting agency that ~~which~~ is recognized by the United States Department of Education. The applicant's chiropractic degree must consist of credits earned in the chiropractic program and may not include academic credit for courses from the bachelor's degree.

(e) Successfully completed the National Board of Chiropractic Examiners certification examination in parts I, II, III, and IV, and the physiotherapy examination of the National Board of Chiropractic Examiners, with a score approved by the board.

(f) Submitted to the department a set of fingerprints on a form and under procedures specified by the department, along with payment in an amount equal to the costs incurred by the Department of Health for the criminal background check of the

applicant.

The board may require an applicant who graduated from an institution accredited by the Council on Chiropractic Education more than 10 years before the date of application to the board to take the National Board of Chiropractic Examiners Special Purposes Examination for Chiropractic, or its equivalent, as determined by the board. The board shall establish by rule a passing score.

Section 6. Subsection (4) of section 464.008, Florida Statutes, is amended to read:

464.008 Licensure by examination.—

~~(4) If an applicant who graduates from an approved program does not take the licensure examination within 6 months after graduation, he or she must enroll in and successfully complete a board approved licensure examination preparatory course. The applicant is responsible for all costs associated with the course and may not use state or federal financial aid for such costs. The board shall by rule establish guidelines for licensure examination preparatory courses.~~

Section 7. Paragraph (e) of subsection (1) of section 464.018, Florida Statutes, is amended to read:

464.018 Disciplinary actions.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in ss. 456.072(2) and 464.0095:

(e) Having been found guilty of~~, regardless of adjudication,~~ or entered a plea of nolo contendere or guilty to, regardless of adjudication, any offense prohibited under s.

435.04 or similar statute of another jurisdiction; or having committed an act which constitutes domestic violence as defined in s. 741.28.

Section 8. Present subsections (13) and (14) of section 467.003, Florida Statutes, are redesignated as subsections (14) and (15), respectively, a new subsection (13) is added to that section, and subsections (1) and (12) of that section are amended, to read:

467.003 Definitions.—As used in this chapter, unless the context otherwise requires:

(1) "Approved midwifery program" means ~~a midwifery school or~~ a midwifery training program ~~which is~~ approved by the department pursuant to s. 467.205.

(12) "Preceptor" means a physician licensed under chapter 458 or chapter 459, a ~~licensed~~ midwife licensed under this chapter, or a certified nurse midwife licensed under chapter 464~~,~~ who has a minimum of 3 years' professional experience~~,~~ and who directs, teaches, supervises, and evaluates the learning experiences of a ~~the~~ student midwife as part of an approved midwifery program.

(13) "Prelicensure course" means a course of study, offered by an accredited midwifery program and approved by the department, which an applicant for licensure must complete before a license may be issued and which provides instruction in the laws and rules of this state and demonstrates the student's competency to practice midwifery under this chapter.

Section 9. Section 467.009, Florida Statutes, is amended to read:

467.009 Accredited and approved midwifery programs;

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education and training requirements.—

(1) The department shall adopt standards for accredited and approved midwifery programs which must include, but need not be limited to, standards for all of the following:

(a) ~~. The standards shall encompass~~ Clinical and classroom instruction in all aspects of prenatal, intrapartal, and postpartal care, including all of the following:

1. Obstetrics.~~,~~
2. Neonatal pediatrics.~~,~~
3. Basic sciences.~~,~~
4. Female reproductive anatomy and physiology.~~,~~
5. Behavioral sciences.~~,~~
6. Childbirth education.~~,~~
7. Community care.~~,~~
8. Epidemiology.~~,~~
9. Genetics.~~,~~
10. Embryology.~~,~~
11. Neonatology.~~,~~
12. Applied pharmacology.~~,~~
13. The medical and legal aspects of midwifery.~~,~~
14. Gynecology and women's health.~~,~~
15. Family planning.~~,~~
16. Nutrition during pregnancy and lactation.~~,~~
17. Breastfeeding.~~, and~~
18. Basic nursing skills~~; and any other instruction determined by the department and council to be necessary~~.

(b) ~~The standards shall incorporate the~~ Core competencies, incorporating those established by the American College of Nurse Midwives and the Midwives Alliance of North America, including

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knowledge, skills, and professional behavior in all of the following areas:

1. Primary management, collaborative management, referral, and medical consultation.~~;~~

2. Antepartal, intrapartal, postpartal, and neonatal care.~~;~~

3. Family planning and gynecological care.~~;~~

4. Common complications.~~; and~~

5. Professional responsibilities.

(c) Noncurricular ~~The standards shall include noncurriculum~~ matters under this section, including, but not limited to, staffing and teacher qualifications.

(2) An accredited and approved midwifery program must offer ~~shall include~~ a course of study ~~and clinical training~~ for a minimum of 3 years which incorporates all of the standards, curriculum guidelines, and educational objectives provided in this section and the rules adopted hereunder.

(3) An accredited and approved midwifery program may reduce ~~If the applicant is a registered nurse or a licensed practical nurse or has previous nursing or midwifery education,~~ the required period of training ~~may be reduced~~ to the extent of the student's ~~applicant's~~ qualifications as a registered nurse or licensed practical nurse or based on prior completion of equivalent nursing or midwifery education, as determined ~~under rules adopted~~ by ~~the~~ department rule~~. In no case shall the training be reduced to a period of less than 2 years~~.

(4)~~(3)~~ An accredited and approved midwifery program may accept students who ~~To be accepted into an approved midwifery program, an applicant shall~~ have both:

(a) A high school diploma or its equivalent.

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(b) Taken three college-level credits each of math and English or demonstrated competencies in communication and computation.

(5)~~(4)~~ As part of its course of study, an accredited and approved midwifery program must require clinical training that includes all of the following:

(a) ~~A student midwife, during training, shall undertake, under the supervision of a preceptor,~~ The care of 50 women in each of the prenatal, intrapartal, and postpartal periods under the supervision of a preceptor.~~, but~~ The same women need not be seen through all three periods.

(b)~~(5)~~ Observation of ~~The student midwife shall observe~~ an additional 25 women in the intrapartal period ~~before qualifying for a license~~.

(6) Clinical ~~The~~ training required under this section must include all of the following:

(a) ~~shall include~~ Training in ~~either~~ hospitals or alternative birth settings, or both.

(b) A requirement that students demonstrate competency in the assessment of and differentiation~~, with particular emphasis on learning the ability to differentiate~~ between low-risk pregnancies and high-risk pregnancies.

(7) A hospital or birthing center receiving public funds shall be required to provide student midwives access to observe labor, delivery, and postpartal procedures, provided the woman in labor has given informed consent. The Department of Health shall assist in facilitating access to hospital training for accredited and approved midwifery programs.

(8)~~(7)~~ The Department of Education shall adopt curricular

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frameworks for midwifery programs offered by ~~conducted within~~ public educational institutions under ~~pursuant to~~ this section.

~~(8) Nonpublic educational institutions that conduct approved midwifery programs shall be accredited by a member of the Commission on Recognition of Postsecondary Accreditation and shall be licensed by the Commission for Independent Education.~~

Section 10. Section 467.011, Florida Statutes, is amended to read:

467.011 Licensed midwives; qualifications; examination ~~Licensure by examination~~.—

~~(1) The department shall administer an examination to test the proficiency of applicants in the core competencies required to practice midwifery as specified in s. 467.009.~~

~~(2) The department shall develop, publish, and make available to interested parties at a reasonable cost a bibliography and guide for the examination.~~

~~(3)~~ The department shall issue a license to practice midwifery to an applicant who meets all of the following criteria:

(1) Demonstrates that he or she has graduated from one of the following:

(a) An accredited and approved midwifery program.

(b) A medical or midwifery program offered in another state, jurisdiction, territory, or country whose graduation requirements were equivalent to or exceeded those required by s. 467.009 and the rules adopted thereunder at the time of graduation.

(2) Demonstrates that he or she has ~~and~~ successfully completed a prelicensure course offered by an accredited and

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approved midwifery program. Students graduating from an accredited and approved midwifery program may meet this requirement by showing that the content requirements for the prelicensure course were covered as part of their course of study.

(3) Submits an application for licensure on a form approved by the department and pays the appropriate fee.

(4) Demonstrates that he or she has received a passing score on an ~~the~~ examination specified by the department~~, upon payment of the required licensure fee~~.

Section 11. Section 467.0125, Florida Statutes, is amended to read:

467.0125 Licensed midwives; qualifications; ~~Licensure by~~ endorsement; temporary certificates.—

(1) The department shall issue a license by endorsement to practice midwifery to an applicant who, upon applying to the department, demonstrates to the department that she or he meets all of the following criteria:

(a)~~1. Holds a valid certificate or diploma from a foreign institution of medicine or midwifery or from a midwifery program offered in another state, bearing the seal of the institution or otherwise authenticated, which renders the individual eligible to practice midwifery in the country or state in which it was issued, provided the requirements therefor are deemed by the department to be substantially equivalent to, or to exceed, those established under this chapter and rules adopted under this chapter, and submits therewith a certified translation of the foreign certificate or diploma; or~~

~~2.~~ Holds an active, unencumbered ~~a valid certificate or~~

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license to practice midwifery in another state, jurisdiction, or territory ~~issued by that state~~, provided the licensing requirements of that state, jurisdiction, or territory at the time the license was issued were ~~therefor are deemed by the department to be~~ substantially equivalent to~~,~~ or exceeded ~~to exceed,~~ those established under this chapter and the rules adopted hereunder ~~under this chapter~~.

(b) Has successfully completed a ~~4 month~~ prelicensure course conducted by an accredited and approved midwifery program ~~and has submitted documentation to the department of successful completion~~.

(c) Submits an application for licensure on a form approved by the department and pays the appropriate fee ~~Has successfully passed the licensed midwifery examination~~.

(2) The department may issue a temporary certificate to practice in areas of critical need to an applicant ~~any midwife who is~~ qualifying for a midwifery license ~~licensure by endorsement~~ under subsection (1) who meets all of the following criteria~~, with the following restrictions~~:

(a) Submits an application for a temporary certificate on a form approved by the department and pays the appropriate fee, which may not exceed $50 and is in addition to the fee required for licensure by endorsement under subsection (1).

(b) Specifies on the application that he or she will ~~The Department of Health shall determine the areas of critical need, and the midwife so certified shall~~ practice only in one or more of the following locations:

1. A county health department.

2. A correctional facility.

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3. A United States Department of Veterans Affairs clinic.

4. A community health center funded by s. 329, s. 330, or s. 340 of the Public Health Service Act.

5. Any other agency or institution that is approved by the State Surgeon General and provides health care to meet the needs of an underserved population in this state.

(c) Will practice only ~~those specific areas,~~ under the supervision ~~auspices~~ of a physician licensed under ~~pursuant to~~ chapter 458 or chapter 459, a certified nurse midwife licensed under ~~pursuant to~~ part I of chapter 464, or a midwife licensed under this chapter~~,~~ who has a minimum of 3 years' professional experience.

(3) The department may issue a temporary certificate under this section with the following restrictions:

(a) A requirement that a temporary certificateholder practice only in areas of critical need. The State Surgeon General shall determine the areas of critical need, which ~~Such areas shall~~ include, but are not ~~be~~ limited to, health professional shortage areas designated by the United States Department of Health and Human Services.

(b) A requirement that if a temporary certificateholder's practice area ceases to be an area of critical need, within 30 days after such change the certificateholder must either:

1. Report a new practice area of critical need to the department; or

2. Voluntarily relinquish the temporary certificate.

(4) The department shall review a temporary certificateholder's practice at least annually to determine whether the certificateholder is meeting the requirements of

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subsections (2) and (3) and the rules adopted thereunder. If the department determines that a certificateholder is not meeting these requirements, the department must revoke the temporary certificate.

(5) A temporary certificate issued under this section is ~~shall be~~ valid ~~only as long as an area~~ for ~~which it is issued remains an area of critical need, but no longer than~~ 2 years~~,~~ and is ~~shall~~ not ~~be~~ renewable.

~~(c) The department may administer an abbreviated oral examination to determine the midwife's competency, but no written regular examination shall be necessary.~~

~~(d) The department shall not issue a temporary certificate to any midwife who is under investigation in another state for an act which would constitute a violation of this chapter until such time as the investigation is complete, at which time the provisions of this section shall apply.~~

~~(e) The department shall review the practice under a temporary certificate at least annually to ascertain that the minimum requirements of the midwifery rules promulgated under this chapter are being met. If it is determined that the minimum requirements are not being met, the department shall immediately revoke the temporary certificate.~~

~~(f) The fee for a temporary certificate shall not exceed $50 and shall be in addition to the fee required for licensure.~~

Section 12. Section 467.205, Florida Statutes, is amended to read:

467.205 Approval of midwifery programs.—

(1) The department must approve an accredited or state-licensed public or private institution seeking to provide

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midwifery education and training as an approved midwifery program in this state if the institution meets all of the following criteria:

(a) Submits an application for approval on a form approved by the department.

(b) Demonstrates to the department's satisfaction that the proposed midwifery program complies with s. 467.009 and the rules adopted thereunder.

(c) For a private institution, demonstrates its accreditation by a member of the Council for Higher Education Accreditation or an accrediting agency approved by the United States Department of Education as an institutional accrediting agency for direct-entry midwifery education programs and its licensing or provisional licensing by the Commission for Independent Education ~~An organization desiring to conduct an approved program for the education of midwives shall apply to the department and submit such evidence as may be required to show that it complies with s. 467.009 and with the rules of the department. Any accredited or state licensed institution of higher learning, public or private, may provide midwifery education and training.~~

~~(2) The department shall adopt rules regarding educational objectives, faculty qualifications, curriculum guidelines, administrative procedures, and other training requirements as are necessary to ensure that approved programs graduate midwives competent to practice under this chapter.~~

~~(3) The department shall survey each organization applying for approval. If the department is satisfied that the program meets the requirements of s. 467.009 and rules adopted pursuant~~

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~~to that section, it shall approve the program~~.

(2)~~(4)~~ The department shall, at least once every 3 years, certify whether each approved midwifery program is currently compliant, and has maintained compliance, ~~complies~~ with the requirements of ~~standards developed under~~ s. 467.009 and the rules adopted thereunder.

(3)~~(5)~~ If the department finds that an approved midwifery program is not in compliance with the requirements of s. 467.009 or the rules adopted thereunder, or has lost its accreditation status, the department must provide its finding to the program in writing and ~~no longer meets the required standards, it~~ may place the program on probationary status for a specified period of time, which may not exceed 3 years ~~until such time as the standards are restored~~.

(4) If a program on probationary status does not come into compliance with the requirements of s. 467.009 or the rules adopted thereunder, or regain its accreditation status, as applicable, within the period specified by the department ~~fails to correct these conditions within a specified period of time~~, the department may rescind the program's approval.

(5) A ~~Any~~ program that has ~~having~~ its approval rescinded has ~~shall have~~ the right to reapply for approval.

(6) The department may grant provisional approval of a new program seeking accreditation status, for a period not to exceed 5 years, provided that all other requirements of this section are met.

(7) The department may rescind provisional approval of a program that fails to meet the requirements of s. 467.009, this section, or the rules adopted thereunder, in accordance with

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procedures provided in subsections (3) and (4) ~~may be granted pending the licensure results of the first graduating class~~.

Section 13. Subsections (2), (3), and (4) and paragraphs (a) and (b) of subsection (5) of section 468.803, Florida Statutes, are amended to read:

468.803 License, registration, and examination requirements.—

(2) An applicant for registration, examination, or licensure must apply to the department on a form prescribed by the board for consideration of board approval. Each initial applicant shall submit ~~a set of~~ fingerprints to the department in accordance with ~~on a form and under~~ procedures specified by the department~~, along with payment in an amount equal to the costs incurred by the department~~ for state and national criminal history checks of the applicant. ~~The department shall submit the fingerprints provided by an applicant to the Department of Law Enforcement for a statewide criminal history check, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check of the applicant.~~ The board shall screen the results to determine if an applicant meets licensure requirements. The board shall consider for examination, registration, or licensure each applicant whom ~~who~~ the board verifies:

(a) Has submitted the completed application and completed the fingerprinting requirements ~~fingerprint forms~~ and has paid the applicable application fee, not to exceed $500~~, and the cost of the state and national criminal history checks~~. The application fee is ~~and cost of the criminal history checks shall~~

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~~be~~ nonrefundable;

(b) Is of good moral character;

(c) Is 18 years of age or older; and

(d) Has completed the appropriate educational preparation.

(3) A person seeking to attain the orthotics or prosthetics experience required for licensure in this state must be approved by the board and registered as a resident by the department. Although a registration may be held in both disciplines, for independent registrations the board may not approve a second registration until at least 1 year after the issuance of the first registration. Notwithstanding subsection (2), a person who has been approved by the board and registered by the department in one discipline may apply for registration in the second discipline without an additional state or national criminal history check during the period in which the first registration is valid. Each independent registration or dual registration is valid for 2 years after the date of issuance unless otherwise revoked by the department upon recommendation of the board. The board shall set a registration fee not to exceed $500 to be paid by the applicant. A registration may be renewed once by the department upon recommendation of the board for a period no longer than 1 year, as such renewal is defined by ~~the~~ board ~~by~~ rule. The renewal fee may not exceed one-half the current registration fee. To be considered by the board for approval of registration as a resident, the applicant must have one of the following:

(a) A Bachelor of Science or higher-level postgraduate degree in orthotics and prosthetics from an institutionally ~~a regionally~~ accredited college or university recognized by the

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Commission on Accreditation of Allied Health Education Programs.

(b) A minimum of a bachelor's degree from an institutionally ~~a regionally~~ accredited college or university and a certificate in orthotics or prosthetics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the board.

(c) A minimum of a bachelor's degree from an institutionally ~~a regionally~~ accredited college or university and a dual certificate in both orthotics and prosthetics from programs recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the board.

(4) The department may develop and administer a state examination for an orthotist or a prosthetist license, or the board may approve the existing examination of a national standards organization. The examination must be predicated on a minimum of a baccalaureate-level education and formalized specialized training in the appropriate field. Each examination must demonstrate a minimum level of competence in basic scientific knowledge, written problem solving, and practical clinical patient management. The board shall require an examination fee not to exceed the actual cost to the board in developing, administering, and approving the examination, which fee must be paid by the applicant. To be considered by the board for examination, the applicant must have:

(a) For an examination in orthotics:

1. A Bachelor of Science or higher-level postgraduate degree in orthotics and prosthetics from an institutionally ~~a~~

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~~regionally~~ accredited college or university recognized by the Commission on Accreditation of Allied Health Education Programs or, at a minimum, a bachelor's degree from an institutionally ~~a~~ ~~regionally~~ accredited college or university and a certificate in orthotics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the board; and

2. An approved orthotics internship of 1 year of qualified experience, as determined by the board, or an orthotic residency or dual residency program recognized by the board.

(b) For an examination in prosthetics:

1. A Bachelor of Science or higher-level postgraduate degree in orthotics and prosthetics from an institutionally ~~a~~ ~~regionally~~ accredited college or university recognized by the Commission on Accreditation of Allied Health Education Programs or, at a minimum, a bachelor's degree from an institutionally ~~a~~ ~~regionally~~ accredited college or university and a certificate in prosthetics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the board; and

2. An approved prosthetics internship of 1 year of qualified experience, as determined by the board, or a prosthetic residency or dual residency program recognized by the board.

(5) In addition to the requirements in subsection (2), to be licensed as:

(a) An orthotist, the applicant must pay a license fee not to exceed $500 and must have:

1. A Bachelor of Science or higher-level postgraduate

degree in orthotics and prosthetics from an institutionally ~~a~~ ~~regionally~~ accredited college or university recognized by the Commission on Accreditation of Allied Health Education Programs, or a bachelor's degree from an institutionally accredited college or university and ~~with~~ a certificate in orthotics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the board;

2. An approved ~~appropriate~~ internship of 1 year of qualified experience, as determined by the board, or a residency program recognized by the board;

3. Completed the mandatory courses; and

4. Passed the state orthotics examination or the board-approved orthotics examination.

(b) A prosthetist, the applicant must pay a license fee not to exceed $500 and must have:

1. A Bachelor of Science or higher-level postgraduate degree in orthotics and prosthetics from an institutionally ~~a~~ ~~regionally~~ accredited college or university recognized by the Commission on Accreditation of Allied Health Education Programs, or a bachelor's degree from an institutionally accredited college or university and ~~with~~ a certificate in prosthetics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the board;

2. An internship of 1 year of qualified experience, as determined by the board, or a residency program recognized by the board;

3. Completed the mandatory courses; and

4. Passed the state prosthetics examination or the board-approved prosthetics examination.

Section 14. Section 483.824, Florida Statutes, is amended to read:

483.824 Qualifications of clinical laboratory director.—A clinical laboratory director must have 4 years of clinical laboratory experience with 2 years of experience in the specialty to be directed or be nationally board certified in the specialty to be directed, and must meet one of the following requirements:

(1) Be a physician licensed under chapter 458 or chapter 459;

(2) Hold an earned doctoral degree in a chemical, physical, or biological science from an institutionally ~~a regionally~~ accredited institution and maintain national certification requirements equal to those required by the federal Health Care Financing Administration; or

(3) For the subspecialty of oral pathology, be a physician licensed under chapter 458 or chapter 459 or a dentist licensed under chapter 466.

Section 15. Subsection (3) of section 490.003, Florida Statutes, is amended to read:

490.003 Definitions.—As used in this chapter:

(3)(a) "Doctoral degree from an American Psychological Association accredited program" means ~~Effective July 1, 1999, "doctoral-level psychological education" and "doctoral degree in psychology" mean~~ a Psy.D., an Ed.D. in psychology, or a Ph.D. in psychology from a psychology program at an educational institution that, at the time the applicant was enrolled and

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graduated:

1.~~(a)~~ Had institutional accreditation from an agency recognized and approved by the United States Department of Education or was recognized as a member in good standing with Universities Canada ~~the Association of Universities and Colleges of Canada~~; and

2.~~(b)~~ Had programmatic accreditation from the American Psychological Association.

(b) "Doctoral degree in psychology" means a Psy.D., an Ed.D. in psychology, or a Ph.D. in psychology from a psychology program at an educational institution that, at the time the applicant was enrolled and graduated, had institutional accreditation from an agency recognized and approved by the United States Department of Education or was recognized as a member in good standing with Universities Canada.

Section 16. Subsection (1) of section 490.005, Florida Statutes, is amended to read:

490.005 Licensure by examination.—

(1) Any person desiring to be licensed as a psychologist shall apply to the department to take the licensure examination. The department shall license each applicant whom ~~who~~ the board certifies has met all of the following requirements:

(a) Completed the application form and remitted a nonrefundable application fee not to exceed $500 and an examination fee set by the board sufficient to cover the actual per applicant cost to the department for development, purchase, and administration of the examination, but not to exceed $500.

(b) Submitted proof satisfactory to the board that the applicant has received:

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1. A doctoral degree from an American Psychological Association accredited program ~~Doctoral level psychological education~~; or

2. The equivalent of a doctoral degree from an American Psychological Association accredited program ~~doctoral level psychological education, as defined in s. 490.003(3),~~ from ~~a program at~~ a school or university located outside the United States of America which was officially recognized by the government of the country in which it is located as an institution or program to train students to practice professional psychology. The applicant has the burden of establishing that this requirement has been met.

(c) Had at least 2 years or 4,000 hours of experience in the field of psychology in association with or under the supervision of a licensed psychologist meeting the academic and experience requirements of this chapter or the equivalent as determined by the board. The experience requirement may be met by work performed on or off the premises of the supervising psychologist if the off-premises work is not the independent, private practice rendering of psychological services that does not have a psychologist as a member of the group actually rendering psychological services on the premises.

(d) Passed the examination. However, an applicant who has obtained a passing score, as established by the board by rule, on the psychology licensure examination designated by the board as the national licensure examination need only pass the Florida law and rules portion of the examination.

Section 17. Subsection (1) of section 490.0051, Florida Statutes, is amended to read:

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490.0051 Provisional licensure; requirements.—

(1) The department shall issue a provisional psychology license to each applicant whom ~~who~~ the board certifies has met all of the following criteria:

(a) Completed the application form and remitted a nonrefundable application fee not to exceed $250, as set by board rule.

(b) Earned a doctoral degree from an American Psychological Association accredited program ~~in psychology as defined in s. 490.003(3)~~.

(c) Met any additional requirements established by board rule.

Section 18. Effective upon this act becoming a law, subsections (1), (3), and (4) of section 491.005, Florida Statutes, are amended to read:

491.005 Licensure by examination.—

(1) CLINICAL SOCIAL WORK.—Upon verification of documentation and payment of a fee not to exceed $200, as set by board rule, ~~plus the actual per applicant cost to the department for purchase of the examination from the American Association of State Social Worker's Boards or a similar national organization,~~ the department shall issue a license as a clinical social worker to an applicant whom ~~who~~ the board certifies has met all of the following criteria:

(a) ~~Has~~ Submitted an application and paid the appropriate fee.

(b)1. ~~Has~~ Received a doctoral degree in social work from a graduate school of social work which at the time the applicant graduated was accredited by an accrediting agency recognized by

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the United States Department of Education or ~~has~~ received a master's degree in social work from a graduate school of social work which at the time the applicant graduated:

a. Was accredited by the Council on Social Work Education;

b. Was accredited by the Canadian Association for ~~of Schools of~~ Social Work Education; or

c. Has been determined to have been a program equivalent to programs approved by the Council on Social Work Education by the Foreign Equivalency Determination Service of the Council on Social Work Education. An applicant who graduated from a program at a university or college outside of the United States or Canada must present documentation of the equivalency determination from the council in order to qualify.

2. The applicant's graduate program ~~must have~~ emphasized direct clinical patient or client health care services, including, but not limited to, coursework in clinical social work, psychiatric social work, medical social work, social casework, psychotherapy, or group therapy. The applicant's graduate program must have included all of the following coursework:

a. A supervised field placement which was part of the applicant's advanced concentration in direct practice, during which the applicant provided clinical services directly to clients.

b. Completion of 24 semester hours or 32 quarter hours in theory of human behavior and practice methods as courses in clinically oriented services, including a minimum of one course in psychopathology, and no more than one course in research, taken in a school of social work accredited or approved pursuant

to subparagraph 1.

3. If the course title which appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant provided ~~shall be required to provide~~ additional documentation, including, but not limited to, a syllabus or catalog description published for the course.

(c) Completed ~~Has had~~ at least 2 years of clinical social work experience, which took place subsequent to completion of a graduate degree in social work at an institution meeting the accreditation requirements of this section, under the supervision of a licensed clinical social worker or the equivalent who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy clinical experience requirements must register pursuant to s. 491.0045 before commencing practice. If the applicant's graduate program was not a program which emphasized direct clinical patient or client health care services as described in subparagraph (b)2., the supervised experience requirement must take place after the applicant has completed a minimum of 15 semester hours or 22 quarter hours of the coursework required. A doctoral internship may be applied toward the clinical social work experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting.

(d) ~~Has~~ Passed a theory and practice examination designated by board rule ~~provided by the department for this purpose~~.

(e) ~~Has~~ Demonstrated, in a manner designated by board rule ~~of the board~~, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy,

and mental health counseling.

(3) MARRIAGE AND FAMILY THERAPY.—Upon verification of documentation and payment of a fee not to exceed $200, as set by board rule, ~~plus the actual cost of the purchase of the examination from the Association of Marital and Family Therapy Regulatory Board, or similar national organization,~~ the department shall issue a license as a marriage and family therapist to an applicant whom ~~who~~ the board certifies has met all of the following criteria:

(a) ~~Has~~ Submitted an application and paid the appropriate fee.

(b) 1. Attained one of the following:

a. A minimum of a master's degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education.

b. A minimum of a master's degree with a major emphasis in marriage and family therapy or a closely related field from a university program accredited by the Council on Accreditation of Counseling and Related Educational Programs and graduate courses approved by the board.

c. ~~Has~~ A minimum of a master's degree with an ~~major~~ emphasis in marriage and family therapy or a closely related field, with a degree conferred before September 1, 2027, from an institutionally accredited college or university ~~from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education or from a Florida university program accredited by the Council for Accreditation of Counseling and Related Educational Programs~~ and graduate courses approved by the board ~~of Clinical Social Work, Marriage and Family Therapy,~~

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~~and Mental Health Counseling~~.

2. If the course title that appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant provided ~~shall provide~~ additional documentation, including, but not limited to, a syllabus or catalog description published for the course. The required master's degree must have been received in an institution of higher education that, at the time the applicant graduated, was fully accredited by an institutional ~~a regional~~ accrediting body recognized by the Council for Higher Education Accreditation or its successor organization ~~Commission on Recognition of Postsecondary Accreditation~~ or was ~~publicly recognized as~~ a member in good standing with Universities Canada ~~the Association of Universities and Colleges of Canada~~, or an institution of higher education located outside the United States and Canada which, at the time the applicant was enrolled and at the time the applicant graduated, maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by an institutional ~~a regional~~ accrediting body recognized by the Council for Higher Education Accreditation or its successor organization ~~Commission on Recognition of Postsecondary Accreditation~~. Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train students to practice as professional marriage and family therapists or psychotherapists. The applicant has the burden of establishing that the requirements of this provision have been met, and the

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board shall require documentation, such as an evaluation by a foreign equivalency determination service, as evidence that the applicant's graduate degree program and education were equivalent to an accredited program in this country. An applicant with a master's degree from a program that did not emphasize marriage and family therapy may complete the coursework requirement in a training institution fully accredited by the Commission on Accreditation for Marriage and Family Therapy Education recognized by the United States Department of Education.

(c) Completed ~~Has had~~ at least 2 years of clinical experience during which 50 percent of the applicant's clients were receiving marriage and family therapy services, which must be at the post-master's level under the supervision of a licensed marriage and family therapist with at least 5 years of experience, or the equivalent, who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before commencing practice. If a graduate has a master's degree with a major emphasis in marriage and family therapy or a closely related field which did not include all of the coursework required by paragraph (b), credit for the post-master's level clinical experience may not commence until the applicant has completed a minimum of 10 of the courses required by paragraph (b), as determined by the board, and at least 6 semester hours or 9 quarter hours of the course credits must have been completed in the area of marriage and family systems, theories, or techniques. Within the 2 years of required experience, the applicant shall provide direct

individual, group, or family therapy and counseling to cases including those involving unmarried dyads, married couples, separating and divorcing couples, and family groups that include children. A doctoral internship may be applied toward the clinical experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting.

(d) ~~Has~~ Passed a theory and practice examination designated by board rule ~~provided by the department~~.

(e) ~~Has~~ Demonstrated, in a manner designated by board rule, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

For the purposes of dual licensure, the department shall license as a marriage and family therapist any person who meets the requirements of s. 491.0057. Fees for dual licensure may not exceed those stated in this subsection.

(4) MENTAL HEALTH COUNSELING.—Upon verification of documentation and payment of a fee not to exceed $200, as set by board rule, ~~plus the actual per-applicant cost of purchase of the examination from the National Board for Certified Counselors or its successor organization,~~ the department shall issue a license as a mental health counselor to an applicant whom ~~who~~ the board certifies has met all of the following criteria:

(a) ~~Has~~ Submitted an application and paid the appropriate fee.

(b)1. Attained ~~Has~~ a minimum of an earned master's degree from a mental health counseling program accredited by the

Council for the Accreditation of Counseling and Related Educational Programs which consists of at least 60 semester hours or 80 quarter hours of clinical and didactic instruction, including a course in human sexuality and a course in substance abuse. If the master's degree is earned from a program related to the practice of mental health counseling which is not accredited by the Council for the Accreditation of Counseling and Related Educational Programs, then the coursework and practicum, internship, or fieldwork must consist of at least 60 semester hours or 80 quarter hours and meet all of the following requirements:

a. Thirty-three semester hours or 44 quarter hours of graduate coursework, which must include a minimum of 3 semester hours or 4 quarter hours of graduate-level coursework in each of the following 11 content areas: counseling theories and practice; human growth and development; diagnosis and treatment of psychopathology; human sexuality; group theories and practice; individual evaluation and assessment; career and lifestyle assessment; research and program evaluation; social and cultural foundations; substance abuse; and legal, ethical, and professional standards issues in the practice of mental health counseling. Courses in research, thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement.

b. A minimum of 3 semester hours or 4 quarter hours of graduate-level coursework addressing diagnostic processes, including differential diagnosis and the use of the current diagnostic tools, such as the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of

Mental Disorders. The graduate program must have emphasized the common core curricular experience.

c. The equivalent, as determined by the board, of at least 700 hours of university-sponsored supervised clinical practicum, internship, or field experience that includes at least 280 hours of direct client services, as required in the accrediting standards of the Council for Accreditation of Counseling and Related Educational Programs for mental health counseling programs. This experience may not be used to satisfy the post-master's clinical experience requirement.

2. ~~Has~~ Provided additional documentation if a course title that appears on the applicant's transcript does not clearly identify the content of the coursework. The documentation must include, but is not limited to, a syllabus or catalog description published for the course.

Education and training in mental health counseling must have been received in an institution of higher education that, at the time the applicant graduated, was fully accredited by an institutional ~~a regional~~ accrediting body recognized by the Council for Higher Education Accreditation or its successor organization or was ~~publicly recognized as~~ a member in good standing with Universities Canada ~~the Association of Universities and Colleges of Canada~~, or an institution of higher education located outside the United States and Canada which, at the time the applicant was enrolled and at the time the applicant graduated, maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by an

institutional ~~a regional~~ accrediting body recognized by the Council for Higher Education Accreditation or its successor organization. Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train students to practice as mental health counselors. The applicant has the burden of establishing that the requirements of this provision have been met, and the board shall require documentation, such as an evaluation by a foreign equivalency determination service, as evidence that the applicant's graduate degree program and education were equivalent to an accredited program in this country. Beginning July 1, 2025, an applicant must have a master's degree from a program that is accredited by the Council for Accreditation of Counseling and Related Educational Programs, the Masters in Psychology and Counseling Accreditation Council, or an equivalent accrediting body which consists of at least 60 semester hours or 80 quarter hours to apply for licensure under this paragraph.

(c) Completed ~~Has had~~ at least 2 years of clinical experience in mental health counseling, which must be at the post-master's level under the supervision of a licensed mental health counselor or the equivalent who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before commencing practice. If a graduate has a master's degree with a major related to the practice of mental health counseling which did not include all the coursework required under sub-

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subparagraphs (b)1.a. and b., credit for the post-master's level clinical experience may not commence until the applicant has completed a minimum of seven of the courses required under sub-subparagraphs (b)1.a. and b., as determined by the board, one of which must be a course in psychopathology or abnormal psychology. A doctoral internship may be applied toward the clinical experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting.

(d) ~~Has~~ Passed a theory and practice examination designated by board rule ~~provided by the department for this purpose~~.

(e) ~~Has~~ Demonstrated, in a manner designated by board rule, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

Section 19. Subsection (6) and paragraph (c) of subsection (9) of section 766.314, Florida Statutes, are amended to read:

766.314 Assessments; plan of operation.—

(6)(a) The association shall make all assessments required by this section, except initial assessments of physicians licensed ~~on or after October 1, 1988, which assessments will be made~~ by the Department of Health ~~Business and Professional Regulation~~, and except assessments of casualty insurers pursuant to subparagraph (5)(c)1., which assessments will be made by the Office of Insurance Regulation. ~~Beginning October 1, 1989, for any physician licensed between October 1 and December 31 of any year, the Department of Business and Professional Regulation shall make the initial assessment plus the assessment for the following calendar year.~~ The Department of Health ~~Business and~~

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~~Professional Regulation~~ shall provide the association, in an electronic format, with a monthly report ~~such frequency as determined to be necessary, a listing, in a computer readable form,~~ of the names and license numbers ~~addresses~~ of all physicians licensed under chapter 458 or chapter 459.

(b)1. The association may enforce collection of assessments required to be paid pursuant to ss. 766.301-766.316 by suit filed in county court, or in circuit court if the amount due could exceed the jurisdictional limits of county court. The association is ~~shall be~~ entitled to an award of attorney ~~attorney's~~ fees, costs, and interest upon the entry of a judgment against a physician for failure to pay such assessment, with such interest accruing until paid. Notwithstanding ~~the provisions of~~ chapters 47 and 48, the association may file such suit in either Leon County or the county of the residence of the defendant. The association shall notify the Department of Health and the applicable board of any unpaid final judgment against a physician within 7 days after the entry of final judgment.

2. The Department of Health ~~Business and Professional Regulation~~, upon notification by the association that an assessment has not been paid and that there is an unsatisfied judgment against a physician, shall refuse to ~~not~~ renew any license issued to ~~practice for~~ such physician under ~~issued pursuant to~~ chapter 458 or chapter 459 until the association notifies the Department of Health that ~~such time as~~ the judgment is satisfied in full.

(c) The Agency for Health Care Administration shall, upon notification by the association that an assessment has not been timely paid, enforce collection of such assessments required to

be paid by hospitals pursuant to ss. 766.301-766.316. Failure of a hospital to pay such assessment is grounds for disciplinary action pursuant to s. 395.1065 notwithstanding any ~~provision of~~ law to the contrary.

(9)

(c) If ~~In the event~~ the total of all current estimates equals 80 percent of the funds on hand and the funds that will become available to the association within the next 12 months from all sources described in subsections (4) and (5) and paragraph (7)(a), the association may ~~shall~~ not accept any new claims without express authority from the Legislature. Nothing in this section precludes ~~herein shall preclude~~ the association from accepting any claim if the injury occurred 18 months or more before ~~prior to~~ the effective date of this suspension. Within 30 days after ~~of~~ the effective date of this suspension, the association shall notify the Governor, the Speaker of the House of Representatives, the President of the Senate, the Office of Insurance Regulation, the Agency for Health Care Administration, and the Department of Health~~, and the Department of Business and Professional Regulation~~ of this suspension.

Section 20. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2022.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: January 26, 2022

I respectfully request that SB 768, relating to Department of Health be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Ana Maria Rodriguez
Florida Senate, District 39

File signed original with committee office

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 16, 2022

I respectfully request that **Senate Bill #768**, relating to Department of Health, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Ana Maria Rodriguez
Florida Senate, District 39

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

February 28, 2022
Meeting Date

Appropriations
Committee

SB 768
Bill Number or Topic

361620
Amendment Barcode (if applicable)

Name Brian Jogerst

Phone 850.222.0191

Address PO Box 11094
Street

Email brian@waypointstrat.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 Association of Healthy Start Coalitions

☐ 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

28 Feb 2022
Meeting Date

Approps
Committee

SB 768
Bill Number or Topic

Amendment 603264
Amendment Barcode (if applicable)

to SB 768

Name Melissa Jaacks

Phone 850.488.8191

Exec. Director NFCA

Address PO Box 14567
Street

Email mjaacks@NFCA.com

Tallahassee FL
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

- [x] I am appearing without compensation or sponsorship.
- [ ] I am a registered lobbyist, representing:
- [ ] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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

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 Appropriations

BILL:	PCS/SB 802 (347860)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); and Senator Gruters and others
SUBJECT:	School Safety
DATE:	February 25, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brick	Bouck	ED	**Favorable**
2.	Grace	Elwell	AED	**Recommend: Fav/CS**
3.	Grace	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 802 provides additional safeguards for Florida's students and schools. The bill extends the sunset date of the Marjory Stoneman Douglas High School Public Safety Commission from July 1, 2023, to July 1, 2025.

The bill clarifies the authority of the Commissioner of Education to enforce compliance with the requirements relating to school safety and security. The bill also clarifies requirements for safe-school officers. Specifically, the bill provides that:

- School safety officers may make arrests on charter school property.
- Sworn law enforcement officers serving as school guardians must complete mental health crisis intervention training.
- Only a sheriff may conduct school guardian training.
- Individuals must satisfy screening requirements before participating in guardian training.

The bill expands school safety planning to require:

- The SBE to establish emergency drill policies and procedures.
- Comprehensive participation from all members of a school threat assessment team.
- Law enforcement officers responsible for responding to the school in the event of an emergency to be on campus and directly involved in the execution of emergency drills.
- Each district school board to adopt a family reunification plan to reunite students and employees with their families in the event a school is closed due to an emergency.

The bill does not impact state revenues or state expenditures. *See* Section V. Fiscal Impact Statement.

Except as otherwise specified in the bill, the bill takes effect July 1, 2022.

II. Present Situation:

State–Level Oversight of School Safety Requirements

State Board of Education

The State Board of Education (SBE) is the chief implementing and coordinating body of public education in Florida and is authorized to adopt rules to implement the provisions of law conferring duties upon the SBE to improve the state system of K-20 public education, except for the state university system. The SBE has authority over the Department of Education (DOE) and is authorized to delegate the SBE's general powers to the Commissioner of Education (commissioner) or the directors of the divisions of the DOE.[1]

The SBE may enforce compliance by district school boards and Florida College System (FCS) institution boards of trustees by:

- Reporting to the Legislature that the school district or FCS institution is unwilling or unable to comply with law or state board rule and recommending action to be taken.
- Withholding the transfer of state funds, discretionary grant funds, discretionary lottery funds, or other specified funds until the school district or FCS institution complies with law or rule.
- Declaring the school district or FCS institution ineligible for competitive grants.
- Requiring monthly or periodic reporting related to noncompliance until it is remedied. [2]

The Commissioner of Education

The commissioner is required to oversee compliance with the safety and security requirements of the Marjory Stoneman Douglas High School Public Safety Act by school districts; district school superintendents; and public schools, including charter schools. The commissioner must facilitate compliance to the maximum extent provided under law, identify incidents of noncompliance, and impose or recommend to the SBE, the Governor, or the Legislature enforcement and sanctioning actions. [3]

The Office of Safe Schools

The Office of Safe Schools (OSS) is a division of the DOE that serves as a central repository for best practices, training standards, and compliance oversight in matters regarding school safety and security, including prevention efforts, intervention efforts, and emergency preparedness planning. OSS responsibilities include:

- The establishment of a school security risk assessment tool for use by school districts.
- Duties related to school safety incident reporting and data.

[1] Section 1001.02, F.S.
[2] Section 1008.32, F.S.
[3] Section 1001.11, F.S.

- The development and implementation of a School Safety Specialist Training Program for school safety specialists, which must be based on national and state best practices on school safety and include active shooter training.
- Provision of a centralized integrated data repository and data analytics resources to improve access to timely, complete, and accurate information integrating data from multiple agencies and sources.
- Provision of ongoing professional development opportunities to district school board personnel. [4]

Marjory Stoneman Douglas High School Public Safety Commission

The Marjory Stoneman Douglas High School Public Safety Commission was established in 2018 to investigate system failures in the Marjory Stoneman Douglas High School shooting and prior mass violence incidents, and to develop recommendations for system improvements.[5] The commission submitted its initial report to the Governor and the Legislature on January 2, 2019,[6] and its second report on November 1, 2019.[7] The commission is scheduled to sunset on July 1, 2023.[8]

Safe-School Officer Requirement

Florida law requires each district school board and school district superintendent to partner with law enforcement and security agencies to establish or assign one or more safe-school officers at each school facility within the district by implementing one or more safe-school officer options which best meet the needs of the school district and charter schools. These options include:

- Establishing a School Resource Officer (SRO) program through a cooperative agreement with law enforcement agencies. SROs are certified law enforcement officers who must meet specified screening requirements and also complete mental health crisis intervention training.
- Commissioning one or more school safety officers. School safety officers are certified law enforcement officers with the power of arrest on district school property, who are employed by either a law enforcement agency or by the district school board. School safety officers must undergo the same screening requirements and crisis intervention training as an SRO.
- Participating in the Coach Aaron Feis Guardian Program.
- Contracting with a security agency to employ as a school security guard an individual who holds a Class "D" and Class "G" license and completes the same training and evaluation requirements as a school guardian.

The school district is required to notify the county sheriff and the OSS immediately, no later than 72 hours, after a safe-school officer:

- Is dismissed for misconduct or is otherwise disciplined.

[4] Section 1001.212, F.S.
[5] Section 943.687(3), F.S.
[6] Commission, *Initial Report* (Jan. 2, 2019), *available at* http://www.fdle.state.fl.us/MSDHS/CommissionReport.pdf (last visited Feb. 17, 2022).
[7] Commission, *Report Submitted to the Governor, Speaker of the House of Representatives and Senate President,* (Nov. 1, 2019), *available at* http://www.fdle.state.fl.us/MSDHS/MSD-Report-2-Public-Version.pdf.
[8] Section 943.687, F.S.

- Discharges his or her firearm in the exercise of the safe-school officer's duties, other than for training purposes.

SROs and school safety officers are required to complete mental health crisis intervention training.[9] Crisis intervention team training is a law enforcement response program designed for first responders who handle crisis calls involving people with mental illness including those with co-occurring substance use disorders. Crisis intervention team training emphasizes a partnership between law enforcement, the mental health and substance abuse treatment system, mental health advocacy groups, and consumers of mental health services and their families.[10] The Florida Criminal Justice Standards and Training Commission offers to sworn law enforcement officers two free courses in crisis intervention training.[11] In addition, the Florida Sheriffs Association receives $800,000 in recurring funds from the Legislature to enhance crisis intervention team training for law enforcement and correctional officers in local sheriff's offices and police departments.[12]

Coach Aaron Feis Guardian Program (Guardian Program)

The guardian program was established in 2018[13] as an option for school districts to meet the safe-school officer requirements in law.[14] Persons certified as school guardians have no authority to act in any law enforcement capacity except to the extent necessary to prevent or abate an active assailant incident.

A sheriff is required to provide access to a guardian program to aid in the prevention or abatement of active assailant incidents on school premises. If a district school board has voted by a majority to implement a guardian program, the sheriff in that county must establish a guardian program to provide training to school district or charter school employees, either directly or through a contract with another sheriff's office that has established a guardian program.

The sheriff must certify as school guardians school employees who:
- Hold a valid concealed weapon license.
- Complete a 144-hour training program.
- Pass a psychological evaluation administered by a licensed psychologist.
- Submit to and pass an initial drug test and subsequent random drug tests in accordance with law and the sheriff's office.
- Successfully complete ongoing training, weapon inspection, and firearm qualification on at least an annual basis. [15]

[9] Section 1006.12, F.S.
[10] Florida Sheriffs Association, *Law Enforcement Programs: Crisis Intervention Team Training*, https://www.flsheriffs.org/law-enforcement-programs/crisis-intervention-team (last visited Jan. 3, 2022).
[11] Florida Department of Law Enforcement, *CJST: Active Courses*, https://www.fdle.state.fl.us/CJSTC/Curriculum/Active-Courses.aspx (last visited Jan. 3, 2022); *see also* Email, Florida Department of Law Enforcement (Jan. 31, 2020).
[12] Specific Appropriation 1300, s. 4, ch. 2021-36, L.O.F.
[13] Section 26, ch. 2018-3, L.O.F.
[14] Section 1006.12, F.S.
[15] Section 30.15, F.S.

The Legislature appropriated $6.5 million for the 2021-2022 fiscal year for sheriffs to certify and train school guardians.[16] As of September 2021, 26 school districts were employing school guardians to satisfy safe-school officer requirements, and an additional 19 districts were employing school guardians as reinforcements for sworn law enforcement officers.[17]

School District Requirements Related to School Safety

Emergency Response Policies and Procedures

District school boards must formulate and prescribe policies and procedures for emergency drills and for actual emergencies, including, but not limited to, fires, natural disasters, active assailant and hostage situations, and bomb threats, for all students and faculty at all district K-12 public schools.

Drills for active assailant and hostage situations must be conducted in accordance with developmentally appropriate and age-appropriate procedures at least as often as other emergency drills. District school board policies must establish emergency response and emergency preparedness policies and procedures, including emergency notification procedures.[18]

The Florida Safe Schools Assessment Tool (FSSAT) is required to be used by school officials at each school district and public school site in the state in conducting security assessments and is intended to help school officials identify threats, vulnerabilities, and appropriate safety controls for the schools that they supervise. The FSSAT is required to address certain components of school safety, such as school emergency and crisis preparedness planning.[19]

Threat Assessment Teams

Each district school board must adopt policies for the establishment of threat assessment teams (TATs) at each school. The purpose of TATs is to coordinate resources and assessment and intervention with individuals whose behavior may pose a threat to the safety of school staff or students. Each TAT must include persons with expertise in counseling, instruction, school administration, and law enforcement.[20] The OSS developed a behavioral threat assessment instrument, the Comprehensive School Threat Assessment Guidelines (CSTAG)[21] to assist TATs in the threat assessment process. The law provides specific requirements for the CSTAG, including that the CSTAG address training for TATs and school administrators.[22]

Each TAT must include persons with expertise in counseling, instruction, school administration, and law enforcement. The TAT must identify members of the school community to whom

[16] Specific Appropriation 93, s. 2, ch. 2021-36, L.O.F.
[17] Timothy Hay, Director, Office of Safe Schools, Remarks at the Meeting of the Marjory Stoneman Douglas High School Public Safety Commission (Sept. 27, 2021) (transcript available at https://www.fdle.state.fl.us/MSDHS/Meetings/2021/September/Documents/09_27_2021-Part-1.aspx, at 15-16).
[18] Section 1006.07(4), F.S.
[19] Section 1006.1493, F.S.
[20] Section 1006.07(7), F.S.
[21] Comprehensive School Threat Assessment Guidelines. Florida Department of Education, *Memo to School District Superintendents and Charter School Administrators Regarding the Standardized Behavioral Threat Assessment Instrument* (Aug. 1, 2019), *available at* https://info.fldoe.org/docushare/dsweb/Get/Document-8617/DPS-2019-116.pdf.
[22] Section 1001.212(12)(a)6., F.S.

threatening behavior should be reported and provide guidance to students, faculty, and staff regarding recognition of threatening or aberrant behavior that may represent a threat to the community, school, or self.

If an immediate mental health or substance abuse crisis is suspected, school personnel must follow policies established by the TAT to engage behavioral health crisis resources. Behavioral health crisis resources, including, but not limited to, mobile crisis teams and SROs trained in crisis intervention, shall provide emergency intervention and assessment, make recommendations, and refer the student for appropriate services. Onsite school personnel are required to report all such situations and actions taken to the TAT, which must contact the other agencies involved with the student and any known service providers to share information and coordinate any necessary follow-up actions. Upon the student's transfer to a different school, the TAT must verify that any intervention services provided to the student remain in place until the TAT of the receiving school independently determines the need for intervention services.[23]

Juvenile Diversion Programs

Juvenile diversion programs are alternatives to juvenile arrest. A juvenile arrest may be diverted based on comprehensive knowledge of the juvenile's criminal history, prior contacts with law enforcement, and prior program enrollment.[24] Florida law directs that a civil citation or similar pre-arrest diversion program for misdemeanor offenses be established in each judicial circuit in the state.[25]

Florida school districts are required to incorporate into student codes of conduct criteria for:

- Recommending to law enforcement that a student who commits a criminal offense be allowed to participate in a civil citation or similar prearrest diversion program as an alternative to expulsion or arrest.
- Assigning to a school-based intervention program a student who commits a petty act of misconduct, as defined by the district school board, which are not a threat to school safety. If a student's assignment is based on a noncriminal offense, the student's participation in a school-based intervention program may not be entered into the Juvenile Justice Information System Prevention Web (JJIS). [26]

Compliance with the community-based diversion programs includes all reporting requirements, including that criminal diversions be entered into JJIS. School districts may still operate their own "diversion programs" that address non-criminal conduct, such as Student Code of Conduct violations and other misbehavior.[27]

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[23] Section 1006.07(7), F.S.
[24] Marjory Stoneman Douglas High School Public Safety Commission (Commission), *Report Submitted to the Governor, Speaker of the House of Representatives and Senate President* (Nov. 1, 2019), *available at* http://www.fdle.state.fl.us/MSDHS/MSD-Report-2-Public-Version.pdf at 131.
[25] Section 985.12, F.S.
[26] Section 1006.07(2), F.S.
[27] Marjory Stoneman Douglas High School Public Safety Commission (Commission), *Report Submitted to the Governor, Speaker of the House of Representatives and Senate President* (Nov. 1, 2019), *available at* http://www.fdle.state.fl.us/MSDHS/MSD-Report-2-Public-Version.pdf, at 133.

An audit conducted by the Department of Juvenile Justice in 2019 revealed that 58 school districts were not offering any form of school-based diversion program. Seven school districts were participating in the civil citation or similar prearrest diversion program of the local judicial circuit, and three school districts were operating school-based diversion programs.[28]

Training for Youth Mental Health and Suicide Awareness and Assistance

Mobile response teams are multi-disciplinary teams of behavioral health professionals and paraprofessionals with specialized crisis intervention and operations training. Mobile response teams provide on-demand crisis intervention services in any setting in which a behavioral health crisis is occurring, including homes, schools and emergency rooms.[29]

Each school safety specialist is required to earn, or designate one or more individuals to earn, certification as a youth mental health awareness and assistance trainer. The school safety specialist must ensure that all school personnel within his or her school district receive youth mental health awareness and assistance training.[30] School personnel are also required to receive training for suicide awareness and prevention.[31] The DOE has developed a list, which has been adopted by the SBE, of approved youth suicide awareness and prevention training materials and suicide screening instruments that may be used for training in youth suicide awareness, suicide prevention, and suicide screening for instructional personnel in elementary school, middle school, and high school.[32]

The approved list of materials is required to identify available standardized suicide screening instruments appropriate for use with a school-age population and which have validity and reliability and include information about obtaining instruction in the administration and use of such instruments.[33] The DOE has approved three suicide screening instruments for use by instructional personnel:

- Columbia – Suicide Severity Rating Scale (C-SSRS): Lifetime-Recent.
- Suicide Assessment Five-Step Evaluation and Triage (SAFE-T).
- SAFE-T with C-SSRS.[34]

Safety Incident Reporting

Each district school board is required to adopt policies to ensure the accurate and timely reporting of incidents related to school safety and discipline.[35] The School Environmental Safety Incident Reporting System (SESIR) system collects data on incidents related to school safety and

[28] Florida Department of Juvenile Justice, *Statewide Audit of School-Based Diversion Programs* (July 1, 2019), *available at* http://www.fdle.state.fl.us/MSDHS/Meetings/2019/August/August-14-1015am-Report-on-Statewide-Assessment-DJ.aspx, at 21-23.
[29] Florida Department of Children and Families, *Mobile Response Teams Framework* (2018), at 6, *available at* https://www.myflfamilies.com/service-programs/samh/publications/docs/Mobile%20Response%20Framework.pdf.
[30] Section 1012.584, F.S.
[31] Section 1012.583, F.S.
[32] Rule 6A-4.0010, F.A.C.
[33] Section 1012.583(1), F.S.
[34] Florida Department of Education, Bureau of Student Support Services, *Suicide Prevention: Suicide Risk Assessment Instruments*, https://www.fldoe.org/schools/k-12-public-schools/bosss/suicide-prevent.stml (last visited Feb. 17, 2022).
[35] Section 1006.07(9), F.S.

discipline that occur on school grounds, school transportation, and off-campus, school-sponsored events.[36] The SBE is required to adopt rules establishing the requirements for the SESIR.[37]

The law requires each school principal to ensure that standardized forms prescribed by SBE rule are used to report data concerning school safety and discipline to the DOE.[38] Upon notification by the department that a superintendent has failed to comply with SESIR reporting requirements, the district school board shall withhold further payment of his or her salary and impose other appropriate sanctions that the commissioner or SBE by law may impose.[39] A district school board member who is responsible for a violation of the reporting or sanctions requirements applicable to a superintendent is subject to suspension and removal.[40]

Mobile Suspicious Activity Reporting Tool (FortifyFL)

FortifyFL, the mobile suspicious activity reporting tool, is a computer and mobile phone application free to all public and private schools in Florida. District and school-level administrators receive and must respond to tips from FortifyFL. Any tips submitted via FortifyFL are sent to local school district and law enforcement officials until action is taken.[41]

The reporting party may provide his or her report anonymously. If the reporting party chooses to disclose his or her identity, it remains confidential and exempt from public records disclosure requirements. Information received through the mobile suspicious activity reporting tool is also exempt. [42]

III. Effect of Proposed Changes:

PCS/SB 802 provides additional safeguards for Florida's students and schools. The bill extends the sunset date of the Marjory Stoneman Douglas High School Public Safety Commission from July 1, 2023, to July 1, 2025.

Commissioner of Education

The bill modifies s. 1001.11, F.S., to clarify the Commissioner of Education's (commissioner's) existing authority to oversee compliance with requirements relating to school safety and security by school districts, district school superintendents, and public schools, including charter schools.

The Office of Safe Schools

The bill modifies s. 1001.212, F.S., to require the Office of Safe Schools (OSS) to develop, in coordination with the Division of Emergency Management and other federal, state, and local law enforcement agencies and first-responder agencies, a model emergency event family reunification plan for use by child care facilities, public K-12 schools, and public postsecondary

[36] Florida Department of Education, *available at* https://www.fldoe.org/safe-schools/sesir-discipline-data/about.stml.
[37] Section 1006.07(9), F.S.
[38] Section 1006.09(6), F.S.
[39] Section 1001.212(8), F.S.
[40] Section 1001.42(13)(b), F.S.
[41] Florida Department of Education, *FortifyFL School Safety Awareness Program* (Oct. 26. 2018) *available at* https://info.fldoe.org/docushare/dsweb/Get/Document-8397/dps-2018-157.pdf, at 1-2.
[42] Section 943.082, F.S.

institutions that are closed or unexpectedly evacuated due to natural or man-made disasters or emergencies. The bill requires the model plan to be reviewed annually and updated if needed, and consider:

- The integration of student information and notification systems to facilitate reunification after a natural or manmade disaster;
- The provision of accurate and real-time verification of reunification, including student identification through a connection to the student information system;
- Parent or guardian custodial verification;
- A verifiable chain of custody; and
- The provision of real-time reporting and status of students and staff.

The bill also adds requirements for the OSS to:

- Provide ongoing professional development opportunities to charter school personnel in addition to existing requirements to provide training to school district personnel.
- Maintain a current directory of public and private school-based diversion programs and coordinate with the Department of Juvenile Justice and each judicial circuit to monitor and facilitate compliance with the law.

To align the name of the centralized integrated data repository with the functions of the program, the bill renames the centralized integrated data repository as the unified search tool, which is to be known as the "Florida School Safety Portal."

Marjory Stoneman Douglas High School Public Safety Commission

The bill modifies s. 943.687, F.S., to extend from July 1, 2023, to July 1, 2025, the sunset date for the Marjory Stoneman Douglas High School Public Safety Commission.

Safe-School Officer Requirement

The bill modifies s. 1006.12, F.S., relating to safe-school officers, to align requirements among all sworn law enforcement officers serving as safe school officers.

The bill modifies requirements relating to school safety officer authority and training by:

- Clarifying that school safety officers have the power to make arrests on property owned or leased by a charter school in the district.
- Requiring that all safe school officers who are also sworn law enforcement officers must complete mental health crisis intervention training using a curriculum developed by a national organization with expertise in mental health crisis intervention. The training must improve the officer's knowledge and skills as a first responder to incidents involving students with emotional disturbance or mental illness, including de-escalation skills to ensure student and officer safety.
- Clarifying that a district school superintendent or charter school administrator, or a respective designee, is responsible for notifying the county sheriff and the OSS after certain misconduct committed by a safe-school officer.

Coach Aaron Feis Guardian Program

The bill clarifies requirements related to school guardians. Specifically, the bill clarifies that:

- An individual must satisfy the background screening, psychological evaluation, and drug test requirements and be approved by the sheriff before participating in any school guardian program training.
- Only a sheriff may conduct school guardian program training.

School District Requirements Related to School Safety

Emergency Response Policies and Procedures

The bill modifies s. 1006.07, F.S., to provide for consistent application of emergency drill requirements across all school districts. The Bill requires the SBE to refer to recommendations provided in published reports of the Marjory Stoneman Douglas High School Public Safety Commission (commission), consult with state and local constituencies, and adopt rules establishing minimum requirements for school district policies and procedures related to emergency response and drills. The SBE's rules must be adopted by August 1, 2023, and must:

- Define, at a minimum, "emergency drill," "active threat," and "after-action report."
- Establish minimum requirements related to the timing, frequency, participation, training, notification, accommodations, and responses to threat situations.
- Specifically address incident type, school level, school type, and student and school characteristics.
- Require all types of emergency drills to be conducted no less frequently than on an annual basis.

The bill requires sheriffs to coordinate with the district school safety specialist to determine the necessary law enforcement officers responsible for responding to a school in the event of an active assailant emergency, and requires schools to notify at least 24 hours before a drill the designated law enforcement officers, who must be physically present on campus and directly involved in the execution of active assailant drills.

To support family reunification following an emergency, the bill requires each district school board and charter school governing board to adopt, in coordination with local law enforcement agencies and local governments, a family reunification plan to reunite students and employees with their families in the event that a school is closed or unexpectedly evacuated due to a natural or manmade disaster. This reunification plan must be reviewed annually and updated, as applicable, and must consider:

- The integration of student information and notification systems to facilitate reunification after a natural or manmade disaster;
- The provision of accurate and real-time verification of reunification, including student identification through a connection to the student information system;
- Parent or guardian custodial verification;
- A verifiable chain of custody; and
- The provision of real-time reporting and status of students and staff.

The bill also amends s. 1006.1493, F.S., to require that the Florida Safe Schools Assessment Tool (FSSAT) address policies and procedures to prepare for and respond to natural or manmade disasters or emergencies, including plans to reunite students and employees with families after a school is closed or unexpectedly evacuated due to such disasters or emergencies.

Threat Assessment Teams

The bill modifies s. 1006.07, F.S., relating to threat assessment teams (TATs). Specifically, the bill requires that all members of the TAT be involved in the threat assessment process from start to finish, including the determination of the final disposition decision. This change may ensure that all members of the TAT are active participants in the entire threat assessment process.

School Environmental Safety Incident Reporting

The bill requires the Department of Education (DOE) to annually publish on its website the most recently available school environmental safety incident data along with other school accountability and performance data in a uniform, statewide format that is easy to read and understand.

Training for Youth Mental Health and Suicide Awareness and Assistance

The bill requires, no later than July 1, 2023, and annually thereafter by July 1, each school district to certify to the DOE, in a format determined by the DOE, that at least 80 percent of school personnel in elementary, middle, and high schools have received the required training for youth mental health awareness and assistance.

The bill requires each district school board to adopt policies to ensure that district schools and local mobile response teams use the same suicide screening instrument approved by the DOE.

Mobile Suspicious Activity Reporting Tool (FortifyFL)

The bill modifies s. 943.082, F.S., effective October 1, 2022, to support credible reporting through the FortifyFL application. The bill requires notification to parties reporting through FortifyFL that if, following investigation, it is determined that a person knowingly submitted a false tip through FortifyFL, the IP address of the device on which the tip was submitted will be provided to law enforcement agencies, and the reporting party may be subject to criminal penalties for a false report. In all other circumstances, unless the reporting party has chosen to disclose his or her identity, the report must remain anonymous.

Except as otherwise specified in the bill, 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:

An agency analysis has not been provided by the Florida Department of Education. However, the bill is clarifying currently required statutory mandates therefore a fiscal impact to state revenues or expenditures is unlikely. The analysis received from the Florida Department of Law Enforcement does not indicate a fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 943.082, 943.687, 1001.11, 1001.212, 1006.07, 1006.12, 1006.1493, and 1012.584.

IX. Additional Information:

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

PCS (347860) by Appropriations Committee (Recommended CS by Appropriations Subcommittee on Education) on February 16, 2022:
The proposed committee substitute removes from the bill the provisions authorizing:

- The Commissioner of Education and the state board to direct a district school board to withhold the salary of a superintendent, or school board members if the superintendent is appointed.

- The DOE Inspector General to investigate allegations of school safety violations by a district school board.

The proposed committee substitute extends from July 1, 2023, to July 1, 2025, the sunset date for the Marjory Stoneman Douglas High School Public Safety Commission. The proposed committee substitute also adds to the bill provisions requiring:

- The Department of Education to annually publish School Environmental Safety Incident Reporting (SESIR) data.
- School boards and mobile response teams are using the same DOE-approved suicide screening instrument.
- School boards to consult with local governments in reunification plans.
- Schools to notify participating law enforcement at least 24 hours prior to active assailant drill.
- Schools districts to certify that at least 80% of district personnel have received youth mental health awareness and assistance training by July 1, 2023, and annually thereafter by July 1.
- The Office of Safe Schools to consider in the development of the model family reunification plan required pursuant to the bill:
  - The integration of student information and notification systems to facilitate reunification after a natural or manmade disaster;
  - The provision of accurate and real-time verification of reunification, including student identification through a connection to the student information system;
  - Parent or guardian custodial verification;
  - A verifiable chain of custody; and
  - The provision of real-time reporting and status of students and staff.

The proposed committee substitute modifies the requirement of the bill for the district school superintendent or charter school administrator to provide certain notifications concerning safe school officers to authorize a superintendent or administrator's designee to make the required notification.

B. Amendments:

None.



Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to school safety; amending s. 943.687, F.S.; extending the sunset date of the Marjory Stoneman Douglas High School Public Safety Commission; amending s. 943.082, F.S.; requiring the FortifyFL reporting tool to notify reporting parties that submitting false information may subject them to criminal penalties; providing that certain reports will remain anonymous; amending s. 1001.11, F.S.; requiring the Commissioner of Education to oversee and enforce compliance with requirements relating to school safety and security; amending s. 1001.212, F.S.; revising the duties of the Office of Safe Schools; amending s. 1006.07, F.S.; requiring certain law enforcement officers to be physically present and directly involved in active assailant emergency drills; requiring school districts to notify such law enforcement officers of such drills within a specified time period; requiring the State Board of Education to adopt rules; specifying the requirements for the rules; requiring district school boards and charter school governing boards, in coordination with specified entities, to adopt family reunification plans; providing for the update and review of such plan; requiring all members of threat assessment teams to be involved in certain processes and decisions; requiring the Department of Education to annually



publish on its website specified data in a certain format; requiring district school boards to adopt certain policies relating to suicide screening instruments; amending s. 1006.12, F.S.; making technical changes; authorizing school safety officers to make arrests on property owned or leased by a charter school under a charter contract; requiring district school superintendents or charter school administrators, instead of school districts, to notify county sheriffs and the Office of Safe Schools of certain safe-school officer-related incidents; specifying training requirements for safe-school officers; amending s. 1006.1493, F.S.; requiring the Florida Safe Schools Assessment Tool to address policies and procedures to prepare for and respond to natural and manmade disasters; amending s. 1012.584, F.S.; requiring each school district to certify that a specified percentage of school personnel have received certain training by a specified date; providing effective dates.

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

Section 1. Subsection (9) of section 943.687, Florida Statutes, is amended to read:

943.687 Marjory Stoneman Douglas High School Public Safety Commission.—

(9) The commission shall submit an initial report on its findings and recommendations to the Governor, President of the



Senate, and Speaker of the House of Representatives by January 1, 2019, and may issue reports annually thereafter. The commission shall sunset July 1, 2025 ~~2023~~, and this section is repealed on that date.

Section 2. Effective October 1, 2022, paragraph (c) is added to subsection (2) of section 943.082, Florida Statutes, to read:

943.082 School Safety Awareness Program.—

(2) The reporting tool must notify the reporting party of the following information:

(c) That if, following an investigation, it is determined that a person knowingly submitted a false tip through FortifyFL, the Internet protocol (IP) address of the device on which the tip was submitted will be provided to law enforcement agencies for further investigation, and the reporting party may be subject to criminal penalties under s. 837.05. In all other circumstances, unless the reporting party has chosen to disclose his or her identity, the report will remain anonymous.

Section 3. Subsection (9) of section 1001.11, Florida Statutes, is amended to read:

1001.11 Commissioner of Education; other duties.—

(9) The commissioner shall oversee and enforce compliance with the requirements relating to school safety and security ~~requirements of the Marjory Stoneman Douglas High School Public Safety Act, chapter 2018-3, Laws of Florida,~~ by school districts; district school superintendents; and public schools, including charter schools. The commissioner must facilitate compliance to the maximum extent provided under law, identify incidents of noncompliance, and impose or recommend to the State



Board of Education, the Governor, or the Legislature enforcement and sanctioning actions pursuant to s. 1008.32 and other authority granted under law.

Section 4. Present subsections (14) and (15) of section 1001.212, Florida Statutes, are redesignated as subsections (15) and (16), respectively, a new subsection (14) and subsection (17) are added to that section, and subsections (2) and (6) of that section are amended, to read:

1001.212 Office of Safe Schools.—There is created in the Department of Education the Office of Safe Schools. The office is fully accountable to the Commissioner of Education. The office shall serve as a central repository for best practices, training standards, and compliance oversight in all matters regarding school safety and security, including prevention efforts, intervention efforts, and emergency preparedness planning. The office shall:

(2) Provide ongoing professional development opportunities to school district and charter school personnel.

(6) Coordinate with the Department of Law Enforcement to provide a unified search tool, known as the Florida School Safety Portal, ~~centralized integrated data repository and data analytics resources~~ to improve access to timely, complete, and accurate information ~~integrating data~~ from, at a minimum, ~~but not limited to,~~ the following data sources ~~by August 1, 2019~~:

(a) Social media Internet posts;

(b) The Department of Children and Families;

(c) The Department of Law Enforcement;

(d) The Department of Juvenile Justice;

(e) The mobile suspicious activity reporting tool known as

FortifyFL;

(f) School environmental safety incident reports collected under subsection (8); and

(g) Local law enforcement.

Data that is exempt or confidential and exempt from public records requirements retains its exempt or confidential and exempt status when incorporated into the centralized integrated data repository. To maintain the confidentiality requirements attached to the information provided to the centralized integrated data repository by the various state and local agencies, data governance and security shall ensure compliance with all applicable state and federal data privacy requirements through the use of user authorization and role-based security, data anonymization and aggregation and auditing capabilities. To maintain the confidentiality requirements attached to the information provided to the centralized integrated data repository by the various state and local agencies, each source agency providing data to the repository shall be the sole custodian of the data for the purpose of any request for inspection or copies thereof under chapter 119. The department shall only allow access to data from the source agencies in accordance with rules adopted by the respective source agencies and the requirements of the Federal Bureau of Investigation Criminal Justice Information Services security policy, where applicable.

(14) Develop, in coordination with the Division of Emergency Management; other federal, state, and local law enforcement agencies; fire and rescue agencies; and first

responder agencies, a model family reunification plan for use by child care facilities, public K-12 schools, and public postsecondary educational institutions that are closed or unexpectedly evacuated due to a natural or manmade disaster. This model plan must consider: the integration of student information and notification systems to facilitate reunification after a natural or manmade disaster; the provision of accurate and real-time verification of reunification, including student identification through a connection to the student information system; parent or guardian custodial verification; a verifiable chain of custody; and the provision of real-time reporting and status of students and staff. This model plan must be reviewed annually and updated, as applicable.

(17) Maintain a current directory of public and private school-based diversion programs and cooperate with each judicial circuit and the Department of Juvenile Justice to facilitate their efforts to monitor and enforce each governing body's compliance with s. 985.12.

Section 5. Paragraph (a) of subsection (4), paragraph (a) of subsection (7), and subsection (9) of section 1006.07, Florida Statutes, are amended, paragraph (d) is added to subsection (6), and subsection (11) is added to that section, to read:

1006.07 District school board duties relating to student discipline and school safety.—The district school board shall provide for the proper accounting for all students, for the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students, including:

(4) EMERGENCY DRILLS; EMERGENCY PROCEDURES.—

(a) Formulate and prescribe policies and procedures, in consultation with the appropriate public safety agencies, for emergency drills and for actual emergencies, including, but not limited to, fires, natural disasters, active assailant and hostage situations, and bomb threats, for all students and faculty at all public schools of the district composed ~~comprised~~ of grades K-12, pursuant to State Board of Education rules. Drills for active assailant and hostage situations must ~~shall~~ be conducted in accordance with developmentally appropriate and age-appropriate procedures, as specified in State Board of Education rules ~~at least as often as other emergency drills~~. Law enforcement officers responsible for responding to the school in the event of an active assailant emergency, as determined necessary by the sheriff in coordination with the district's school safety specialist, must be physically present on campus and directly involved in the execution of active assailant emergency drills. School districts must notify law enforcement officers at least 24 hours before conducting an active assailant emergency drill that such law enforcement officers are expected to attend. District school board policies must ~~shall~~ include commonly used alarm system responses for specific types of emergencies and verification by each school that drills have been provided as required by law, State Board of Education rules, and fire protection codes and may provide accommodations for drills conducted by exceptional student education centers. District school boards shall establish emergency response and emergency preparedness policies and procedures that include, but are not limited to, identifying the individuals responsible for

contacting the primary emergency response agency and the emergency response agency ~~that is~~ responsible for notifying the school district for each type of emergency. The State Board of Education shall refer to recommendations provided in reports published pursuant to s. 943.687 for guidance and, by August 1, 2023, consult with state and local constituencies to adopt rules applicable to the requirements of this subsection which, at a minimum, define the terms "emergency drill," "active threat," and "after-action report" and establish minimum emergency drill policies and procedures related to the timing, frequency, participation, training, notification, accommodations, and responses to threat situations by incident type, school level, school type, and student and school characteristics. The rules must require all types of emergency drills to be conducted no less frequently than on an annual school year basis.

(6) SAFETY AND SECURITY BEST PRACTICES.—Each district school superintendent shall establish policies and procedures for the prevention of violence on school grounds, including the assessment of and intervention with individuals whose behavior poses a threat to the safety of the school community.

(d) Each district school board and charter school governing board shall adopt, in coordination with local law enforcement agencies and local governments, a family reunification plan to reunite students and employees with their families in the event that a school is closed or unexpectedly evacuated due to a natural or manmade disaster. This reunification plan must be reviewed annually and updated, as applicable.

(7) THREAT ASSESSMENT TEAMS.—Each district school board shall adopt policies for the establishment of threat assessment

teams at each school whose duties include the coordination of resources and assessment and intervention with individuals whose behavior may pose a threat to the safety of school staff or students consistent with the model policies developed by the Office of Safe Schools. Such policies must include procedures for referrals to mental health services identified by the school district pursuant to s. 1012.584(4), when appropriate, and procedures for behavioral threat assessments in compliance with the instrument developed pursuant to s. 1001.212(12).

(a) A threat assessment team shall include persons with expertise in counseling, instruction, school administration, and law enforcement. All members of the threat assessment team must be involved in the threat assessment process and final decisionmaking. The threat assessment teams shall identify members of the school community to whom threatening behavior should be reported and provide guidance to students, faculty, and staff regarding recognition of threatening or aberrant behavior that may represent a threat to the community, school, or self. Upon the availability of the behavioral threat assessment instrument developed pursuant to s. 1001.212(12), the threat assessment team shall use that instrument.

(9) SCHOOL ENVIRONMENTAL SAFETY INCIDENT REPORTING.—Each district school board shall adopt policies to ensure the accurate and timely reporting of incidents related to school safety and discipline. The district school superintendent is responsible for school environmental safety incident reporting. A district school superintendent who fails to comply with this subsection is subject to the penalties specified in law, including, but not limited to, s. 1001.42(13)(b) or s.

1001.51(12)(b), as applicable. The State Board of Education shall adopt rules establishing the requirements for the school environmental safety incident report. Annually, the department shall publish on its website the most recently available school environmental safety incident data along with other school accountability and performance data in a uniform, statewide format that is easy to read and understand.

(11) SUICIDE SCREENING INSTRUMENT.—Each district school board shall adopt policies to ensure that district schools and local mobile response teams use the same suicide screening instrument approved by the department pursuant to s. 1012.583.

Section 6. Present subsection (6) of section 1006.12, Florida Statutes, is redesignated as subsection (8), a new subsection (6) and subsection (7) are added to that section, and paragraph (c) of subsection (1), paragraphs (a) and (b) of subsection (2), and subsection (5) of that section are amended, to read:

1006.12 Safe-school officers at each public school.—For the protection and safety of school personnel, property, students, and visitors, each district school board and school district superintendent shall partner with law enforcement agencies or security agencies to establish or assign one or more safe-school officers at each school facility within the district, including charter schools. A district school board must collaborate with charter school governing boards to facilitate charter school access to all safe-school officer options available under this section. The school district may implement any combination of the options in subsections (1)-(4) to best meet the needs of the school district and charter schools.

(1) SCHOOL RESOURCE OFFICER.—A school district may establish school resource officer programs through a cooperative agreement with law enforcement agencies.

~~(c) Complete mental health crisis intervention training using a curriculum developed by a national organization with expertise in mental health crisis intervention. The training shall improve officers' knowledge and skills as first responders to incidents involving students with emotional disturbance or mental illness, including de-escalation skills to ensure student and officer safety.~~

(2) SCHOOL SAFETY OFFICER.—A school district may commission one or more school safety officers for the protection and safety of school personnel, property, and students within the school district. The district school superintendent may recommend, and the district school board may appoint, one or more school safety officers.

(a) School safety officers shall undergo criminal background checks, drug testing, and a psychological evaluation and be law enforcement officers, as defined in s. 943.10(1), certified under ~~the provisions of~~ chapter 943 and employed by either a law enforcement agency or by the district school board. If the officer is employed by the district school board, the district school board is the employing agency for purposes of chapter 943~~,~~ and must comply with ~~the provisions of~~ that chapter.

(b) A school safety officer has and shall exercise the power to make arrests for violations of law on district school board property or on property owned or leased by a charter school under a charter contract, as applicable, and to arrest

persons, whether on or off such property, who violate any law on such property under the same conditions that deputy sheriffs are authorized to make arrests. A school safety officer has the authority to carry weapons when performing his or her official duties.

(5) NOTIFICATION.—The district school superintendent or charter school administrator, or a respective designee, ~~school district~~ shall notify the county sheriff and the Office of Safe Schools immediately after, but no later than 72 hours after:

(a) A safe-school officer is dismissed for misconduct or is otherwise disciplined.

(b) A safe-school officer discharges his or her firearm in the exercise of the safe-school officer's duties, other than for training purposes.

(6) CRISIS INTERVENTION TRAINING.—Each safe-school officer who is also a sworn law enforcement officer shall complete mental health crisis intervention training using a curriculum developed by a national organization with expertise in mental health crisis intervention. The training must improve the officer's knowledge and skills as a first responder to incidents involving students with emotional disturbance or mental illness, including de-escalation skills to ensure student and officer safety.

(7) LIMITATIONS.—An individual must satisfy the background screening, psychological evaluation, and drug test requirements and be approved by the sheriff before participating in any training required by s. 30.15(1)(k), which may be conducted only by a sheriff.



If a district school board, through its adopted policies, procedures, or actions, denies a charter school access to any safe-school officer options pursuant to this section, the school district must assign a school resource officer or school safety officer to the charter school. Under such circumstances, the charter school's share of the costs of the school resource officer or school safety officer may not exceed the safe school allocation funds provided to the charter school pursuant to s. 1011.62(13) and shall be retained by the school district.

Section 7. Paragraph (a) of subsection (2) of section 1006.1493, Florida Statutes, is amended to read:

1006.1493 Florida Safe Schools Assessment Tool.—

(2) The FSSAT must help school officials identify threats, vulnerabilities, and appropriate safety controls for the schools that they supervise, pursuant to the security risk assessment requirements of s. 1006.07(6).

(a) At a minimum, the FSSAT must address all of the following components:

1. School emergency and crisis preparedness planning;

2. Security, crime, and violence prevention policies and procedures;

3. Physical security measures;

4. Professional development training needs;

5. An examination of support service roles in school safety, security, and emergency planning;

6. School security and school police staffing, operational practices, and related services;

7. School and community collaboration on school safety; ~~and~~

8. Policies and procedures for school officials to prepare



for and respond to natural and manmade disasters, including family reunification plans to reunite students and employees with their families after a school is closed or unexpectedly evacuated due to such disasters; and

9. A return on investment analysis of the recommended physical security controls.

Section 8. Subsection (5) is added to section 1012.584, Florida Statutes, to read:

1012.584 Continuing education and inservice training for youth mental health awareness and assistance.—

(5) No later than July 1, 2023, and annually thereafter by July 1, each school district shall certify to the department, in a format determined by the department, that at least 80 percent of school personnel in elementary, middle, and high schools have received the training required under this section.

Section 9. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2022.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 802
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); and Senator Gruters and others
SUBJECT:	School Safety
DATE:	March 2, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brick	Bouck	ED	**Favorable**
2.	Grace	Elwell	AED	**Recommend: Fav/CS**
3.	Grace	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 802 provides additional safeguards for Florida's students and schools. The bill extends the sunset date of the Marjory Stoneman Douglas High School Public Safety Commission from July 1, 2023, to July 1, 2025.

The bill clarifies the authority of the Commissioner of Education to enforce compliance with the requirements relating to school safety and security. The bill also clarifies requirements for safe-school officers. Specifically, the bill provides that:

- School safety officers may make arrests on charter school property.
- Sworn law enforcement officers serving as school guardians must complete mental health crisis intervention training.
- Only a sheriff may conduct school guardian training.
- Individuals must satisfy screening requirements before participating in guardian training.

The bill expands school safety planning to require:

- The SBE to establish emergency drill policies and procedures.
- Comprehensive participation from all members of a school threat assessment team.
- Law enforcement officers responsible for responding to the school in the event of an emergency to be on campus and directly involved in the execution of emergency drills.
- Each district school board to adopt a family reunification plan to reunite students and employees with their families in the event a school is closed due to an emergency.

The bill does not impact state revenues or state expenditures. *See* Section V. Fiscal Impact Statement.

Except as otherwise specified in the bill, the bill takes effect July 1, 2022.

II. Present Situation:

State–Level Oversight of School Safety Requirements

State Board of Education

The State Board of Education (SBE) is the chief implementing and coordinating body of public education in Florida and is authorized to adopt rules to implement the provisions of law conferring duties upon the SBE to improve the state system of K-20 public education, except for the state university system. The SBE has authority over the Department of Education (DOE) and is authorized to delegate the SBE's general powers to the Commissioner of Education (commissioner) or the directors of the divisions of the DOE.[1]

The SBE may enforce compliance by district school boards and Florida College System (FCS) institution boards of trustees by:

- Reporting to the Legislature that the school district or FCS institution is unwilling or unable to comply with law or state board rule and recommending action to be taken.
- Withholding the transfer of state funds, discretionary grant funds, discretionary lottery funds, or other specified funds until the school district or FCS institution complies with law or rule.
- Declaring the school district or FCS institution ineligible for competitive grants.
- Requiring monthly or periodic reporting related to noncompliance until it is remedied. [2]

The Commissioner of Education

The commissioner is required to oversee compliance with the safety and security requirements of the Marjory Stoneman Douglas High School Public Safety Act by school districts; district school superintendents; and public schools, including charter schools. The commissioner must facilitate compliance to the maximum extent provided under law, identify incidents of noncompliance, and impose or recommend to the SBE, the Governor, or the Legislature enforcement and sanctioning actions. [3]

The Office of Safe Schools

The Office of Safe Schools (OSS) is a division of the DOE that serves as a central repository for best practices, training standards, and compliance oversight in matters regarding school safety and security, including prevention efforts, intervention efforts, and emergency preparedness planning. OSS responsibilities include:

- The establishment of a school security risk assessment tool for use by school districts.
- Duties related to school safety incident reporting and data.

[1] Section 1001.02, F.S.
[2] Section 1008.32, F.S.
[3] Section 1001.11, F.S.

- The development and implementation of a School Safety Specialist Training Program for school safety specialists, which must be based on national and state best practices on school safety and include active shooter training.
- Provision of a centralized integrated data repository and data analytics resources to improve access to timely, complete, and accurate information integrating data from multiple agencies and sources.
- Provision of ongoing professional development opportunities to district school board personnel. [4]

Marjory Stoneman Douglas High School Public Safety Commission

The Marjory Stoneman Douglas High School Public Safety Commission was established in 2018 to investigate system failures in the Marjory Stoneman Douglas High School shooting and prior mass violence incidents, and to develop recommendations for system improvements.[5] The commission submitted its initial report to the Governor and the Legislature on January 2, 2019,[6] and its second report on November 1, 2019.[7] The commission is scheduled to sunset on July 1, 2023.[8]

Safe-School Officer Requirement

Florida law requires each district school board and school district superintendent to partner with law enforcement and security agencies to establish or assign one or more safe-school officers at each school facility within the district by implementing one or more safe-school officer options which best meet the needs of the school district and charter schools. These options include:

- Establishing a School Resource Officer (SRO) program through a cooperative agreement with law enforcement agencies. SROs are certified law enforcement officers who must meet specified screening requirements and also complete mental health crisis intervention training.
- Commissioning one or more school safety officers. School safety officers are certified law enforcement officers with the power of arrest on district school property, who are employed by either a law enforcement agency or by the district school board. School safety officers must undergo the same screening requirements and crisis intervention training as an SRO.
- Participating in the Coach Aaron Feis Guardian Program.
- Contracting with a security agency to employ as a school security guard an individual who holds a Class "D" and Class "G" license and completes the same training and evaluation requirements as a school guardian.

The school district is required to notify the county sheriff and the OSS immediately, no later than 72 hours, after a safe-school officer:

- Is dismissed for misconduct or is otherwise disciplined.

[4] Section 1001.212, F.S.
[5] Section 943.687(3), F.S.
[6] Commission, *Initial Report* (Jan. 2, 2019), *available at* http://www.fdle.state.fl.us/MSDHS/CommissionReport.pdf (last visited Feb. 17, 2022).
[7] Commission, *Report Submitted to the Governor, Speaker of the House of Representatives and Senate President*, (Nov. 1, 2019), *available at* http://www.fdle.state.fl.us/MSDHS/MSD-Report-2-Public-Version.pdf.
[8] Section 943.687, F.S.

- Discharges his or her firearm in the exercise of the safe-school officer's duties, other than for training purposes.

SROs and school safety officers are required to complete mental health crisis intervention training.[9] Crisis intervention team training is a law enforcement response program designed for first responders who handle crisis calls involving people with mental illness including those with co-occurring substance use disorders. Crisis intervention team training emphasizes a partnership between law enforcement, the mental health and substance abuse treatment system, mental health advocacy groups, and consumers of mental health services and their families.[10] The Florida Criminal Justice Standards and Training Commission offers to sworn law enforcement officers two free courses in crisis intervention training.[11] In addition, the Florida Sheriffs Association receives $800,000 in recurring funds from the Legislature to enhance crisis intervention team training for law enforcement and correctional officers in local sheriff's offices and police departments.[12]

Coach Aaron Feis Guardian Program (Guardian Program)

The guardian program was established in 2018[13] as an option for school districts to meet the safe-school officer requirements in law.[14] Persons certified as school guardians have no authority to act in any law enforcement capacity except to the extent necessary to prevent or abate an active assailant incident.

A sheriff is required to provide access to a guardian program to aid in the prevention or abatement of active assailant incidents on school premises. If a district school board has voted by a majority to implement a guardian program, the sheriff in that county must establish a guardian program to provide training to school district or charter school employees, either directly or through a contract with another sheriff's office that has established a guardian program.

The sheriff must certify as school guardians school employees who:
- Hold a valid concealed weapon license.
- Complete a 144-hour training program.
- Pass a psychological evaluation administered by a licensed psychologist.
- Submit to and pass an initial drug test and subsequent random drug tests in accordance with law and the sheriff's office.
- Successfully complete ongoing training, weapon inspection, and firearm qualification on at least an annual basis. [15]

[9] Section 1006.12, F.S.
[10] Florida Sheriffs Association, *Law Enforcement Programs: Crisis Intervention Team Training*, https://www.flsheriffs.org/law-enforcement-programs/crisis-intervention-team (last visited Jan. 3, 2022).
[11] Florida Department of Law Enforcement, *CJST: Active Courses*, https://www.fdle.state.fl.us/CJSTC/Curriculum/Active-Courses.aspx (last visited Jan. 3, 2022); *see also* Email, Florida Department of Law Enforcement (Jan. 31, 2020).
[12] Specific Appropriation 1300, s. 4, ch. 2021-36, L.O.F.
[13] Section 26, ch. 2018-3, L.O.F.
[14] Section 1006.12, F.S.
[15] Section 30.15, F.S.

The Legislature appropriated $6.5 million for the 2021-2022 fiscal year for sheriffs to certify and train school guardians.[16] As of September 2021, 26 school districts were employing school guardians to satisfy safe-school officer requirements, and an additional 19 districts were employing school guardians as reinforcements for sworn law enforcement officers.[17]

School District Requirements Related to School Safety

Emergency Response Policies and Procedures

District school boards must formulate and prescribe policies and procedures for emergency drills and for actual emergencies, including, but not limited to, fires, natural disasters, active assailant and hostage situations, and bomb threats, for all students and faculty at all district K-12 public schools.

Drills for active assailant and hostage situations must be conducted in accordance with developmentally appropriate and age-appropriate procedures at least as often as other emergency drills. District school board policies must establish emergency response and emergency preparedness policies and procedures, including emergency notification procedures.[18]

The Florida Safe Schools Assessment Tool (FSSAT) is required to be used by school officials at each school district and public school site in the state in conducting security assessments and is intended to help school officials identify threats, vulnerabilities, and appropriate safety controls for the schools that they supervise. The FSSAT is required to address certain components of school safety, such as school emergency and crisis preparedness planning.[19]

Threat Assessment Teams

Each district school board must adopt policies for the establishment of threat assessment teams (TATs) at each school. The purpose of TATs is to coordinate resources and assessment and intervention with individuals whose behavior may pose a threat to the safety of school staff or students. Each TAT must include persons with expertise in counseling, instruction, school administration, and law enforcement.[20] The OSS developed a behavioral threat assessment instrument, the Comprehensive School Threat Assessment Guidelines (CSTAG)[21] to assist TATs in the threat assessment process. The law provides specific requirements for the CSTAG, including that the CSTAG address training for TATs and school administrators.[22]

Each TAT must include persons with expertise in counseling, instruction, school administration, and law enforcement. The TAT must identify members of the school community to whom

[16] Specific Appropriation 93, s. 2, ch. 2021-36, L.O.F.
[17] Timothy Hay, Director, Office of Safe Schools, Remarks at the Meeting of the Marjory Stoneman Douglas High School Public Safety Commission (Sept. 27, 2021) (transcript available at https://www.fdle.state.fl.us/MSDHS/Meetings/2021/September/Documents/09_27_2021-Part-1.aspx, at 15-16).
[18] Section 1006.07(4), F.S.
[19] Section 1006.1493, F.S.
[20] Section 1006.07(7), F.S.
[21] Comprehensive School Threat Assessment Guidelines. Florida Department of Education, *Memo to School District Superintendents and Charter School Administrators Regarding the Standardized Behavioral Threat Assessment Instrument* (Aug. 1, 2019), *available at* https://info.fldoe.org/docushare/dsweb/Get/Document-8617/DPS-2019-116.pdf.
[22] Section 1001.212(12)(a)6., F.S.

threatening behavior should be reported and provide guidance to students, faculty, and staff regarding recognition of threatening or aberrant behavior that may represent a threat to the community, school, or self.

If an immediate mental health or substance abuse crisis is suspected, school personnel must follow policies established by the TAT to engage behavioral health crisis resources. Behavioral health crisis resources, including, but not limited to, mobile crisis teams and SROs trained in crisis intervention, shall provide emergency intervention and assessment, make recommendations, and refer the student for appropriate services. Onsite school personnel are required to report all such situations and actions taken to the TAT, which must contact the other agencies involved with the student and any known service providers to share information and coordinate any necessary follow-up actions. Upon the student's transfer to a different school, the TAT must verify that any intervention services provided to the student remain in place until the TAT of the receiving school independently determines the need for intervention services.[23]

Juvenile Diversion Programs

Juvenile diversion programs are alternatives to juvenile arrest. A juvenile arrest may be diverted based on comprehensive knowledge of the juvenile's criminal history, prior contacts with law enforcement, and prior program enrollment.[24] Florida law directs that a civil citation or similar pre-arrest diversion program for misdemeanor offenses be established in each judicial circuit in the state.[25]

Florida school districts are required to incorporate into student codes of conduct criteria for:

- Recommending to law enforcement that a student who commits a criminal offense be allowed to participate in a civil citation or similar prearrest diversion program as an alternative to expulsion or arrest.
- Assigning to a school-based intervention program a student who commits a petty act of misconduct, as defined by the district school board, which are not a threat to school safety. If a student's assignment is based on a noncriminal offense, the student's participation in a school-based intervention program may not be entered into the Juvenile Justice Information System Prevention Web (JJIS). [26]

Compliance with the community-based diversion programs includes all reporting requirements, including that criminal diversions be entered into JJIS. School districts may still operate their own "diversion programs" that address non-criminal conduct, such as Student Code of Conduct violations and other misbehavior.[27]

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[23] Section 1006.07(7), F.S.
[24] Marjory Stoneman Douglas High School Public Safety Commission (Commission), *Report Submitted to the Governor, Speaker of the House of Representatives and Senate President* (Nov. 1, 2019), *available at* http://www.fdle.state.fl.us/MSDHS/MSD-Report-2-Public-Version.pdf at 131.
[25] Section 985.12, F.S.
[26] Section 1006.07(2), F.S.
[27] Marjory Stoneman Douglas High School Public Safety Commission (Commission), *Report Submitted to the Governor, Speaker of the House of Representatives and Senate President* (Nov. 1, 2019), *available at* http://www.fdle.state.fl.us/MSDHS/MSD-Report-2-Public-Version.pdf, at 133.

An audit conducted by the Department of Juvenile Justice in 2019 revealed that 58 school districts were not offering any form of school-based diversion program. Seven school districts were participating in the civil citation or similar prearrest diversion program of the local judicial circuit, and three school districts were operating school-based diversion programs.[28]

Training for Youth Mental Health and Suicide Awareness and Assistance

Mobile response teams are multi-disciplinary teams of behavioral health professionals and paraprofessionals with specialized crisis intervention and operations training. Mobile response teams provide on-demand crisis intervention services in any setting in which a behavioral health crisis is occurring, including homes, schools and emergency rooms.[29]

Each school safety specialist is required to earn, or designate one or more individuals to earn, certification as a youth mental health awareness and assistance trainer. The school safety specialist must ensure that all school personnel within his or her school district receive youth mental health awareness and assistance training.[30] School personnel are also required to receive training for suicide awareness and prevention.[31] The DOE has developed a list, which has been adopted by the SBE, of approved youth suicide awareness and prevention training materials and suicide screening instruments that may be used for training in youth suicide awareness, suicide prevention, and suicide screening for instructional personnel in elementary school, middle school, and high school.[32]

The approved list of materials is required to identify available standardized suicide screening instruments appropriate for use with a school-age population and which have validity and reliability and include information about obtaining instruction in the administration and use of such instruments.[33] The DOE has approved three suicide screening instruments for use by instructional personnel:

- Columbia – Suicide Severity Rating Scale (C-SSRS): Lifetime-Recent.
- Suicide Assessment Five-Step Evaluation and Triage (SAFE-T).
- SAFE-T with C-SSRS.[34]

Safety Incident Reporting

Each district school board is required to adopt policies to ensure the accurate and timely reporting of incidents related to school safety and discipline.[35] The School Environmental Safety Incident Reporting System (SESIR) system collects data on incidents related to school safety and

[28] Florida Department of Juvenile Justice, *Statewide Audit of School-Based Diversion Programs* (July 1, 2019), *available at* http://www.fdle.state.fl.us/MSDHS/Meetings/2019/August/August-14-1015am-Report-on-Statewide-Assessment-DJ.aspx, at 21-23.
[29] Florida Department of Children and Families, *Mobile Response Teams Framework* (2018), at 6, *available at* https://www.myflfamilies.com/service-programs/samh/publications/docs/Mobile%20Response%20Framework.pdf.
[30] Section 1012.584, F.S.
[31] Section 1012.583, F.S.
[32] Rule 6A-4.0010, F.A.C.
[33] Section 1012.583(1), F.S.
[34] Florida Department of Education, Bureau of Student Support Services, *Suicide Prevention: Suicide Risk Assessment Instruments*, https://www.fldoe.org/schools/k-12-public-schools/bosss/suicide-prevent.stml (last visited Feb. 17, 2022).
[35] Section 1006.07(9), F.S.

discipline that occur on school grounds, school transportation, and off-campus, school-sponsored events.[36] The SBE is required to adopt rules establishing the requirements for the SESIR.[37]

The law requires each school principal to ensure that standardized forms prescribed by SBE rule are used to report data concerning school safety and discipline to the DOE.[38] Upon notification by the department that a superintendent has failed to comply with SESIR reporting requirements, the district school board shall withhold further payment of his or her salary and impose other appropriate sanctions that the commissioner or SBE by law may impose.[39] A district school board member who is responsible for a violation of the reporting or sanctions requirements applicable to a superintendent is subject to suspension and removal.[40]

Mobile Suspicious Activity Reporting Tool (FortifyFL)

FortifyFL, the mobile suspicious activity reporting tool, is a computer and mobile phone application free to all public and private schools in Florida. District and school-level administrators receive and must respond to tips from FortifyFL. Any tips submitted via FortifyFL are sent to local school district and law enforcement officials until action is taken.[41]

The reporting party may provide his or her report anonymously. If the reporting party chooses to disclose his or her identity, it remains confidential and exempt from public records disclosure requirements. Information received through the mobile suspicious activity reporting tool is also exempt. [42]

III. Effect of Proposed Changes:

This bill provides additional safeguards for Florida's students and schools. The bill extends the sunset date of the Marjory Stoneman Douglas High School Public Safety Commission from July 1, 2023, to July 1, 2025.

State-level Oversight of School Safety Requirements

Commissioner of Education

The bill modifies s. 1001.11, F.S., to clarify the Commissioner of Education's (commissioner's) existing authority to oversee compliance with requirements relating to school safety and security by school districts, district school superintendents, and public schools, including charter schools.

The Office of Safe Schools

The bill modifies s. 1001.212, F.S., to require the Office of Safe Schools (OSS) to develop, in coordination with the Division of Emergency Management and other federal, state, and local law

[36] Florida Department of Education, *available at* https://www.fldoe.org/safe-schools/sesir-discipline-data/about.stml.
[37] Section 1006.07(9), F.S.
[38] Section 1006.09(6), F.S.
[39] Section 1001.212(8), F.S.
[40] Section 1001.42(13)(b), F.S.
[41] Florida Department of Education, *FortifyFL School Safety Awareness Program* (Oct. 26. 2018) *available at* https://info.fldoe.org/docushare/dsweb/Get/Document-8397/dps-2018-157.pdf, at 1-2.
[42] Section 943.082, F.S.

enforcement agencies and first-responder agencies, a model emergency event family reunification plan for use by child care facilities, public K-12 schools, and public postsecondary institutions that are closed or unexpectedly evacuated due to natural or man-made disasters or emergencies. The bill requires the model plan to be reviewed annually and updated if needed, and consider:

- The integration of student information and notification systems to facilitate reunification after a natural or manmade disaster;
- The provision of accurate and real-time verification of reunification, including student identification through a connection to the student information system;
- Parent or guardian custodial verification;
- A verifiable chain of custody; and
- The provision of real-time reporting and status of students and staff.

The bill also adds requirements for the OSS to:

- Provide ongoing professional development opportunities to charter school personnel in addition to existing requirements to provide training to school district personnel.
- Maintain a current directory of public and private school-based diversion programs and coordinate with the Department of Juvenile Justice and each judicial circuit to monitor and facilitate compliance with the law.

To align the name of the centralized integrated data repository with the functions of the program, the bill renames the centralized integrated data repository as the unified search tool, which is to be known as the "Florida School Safety Portal."

Marjory Stoneman Douglas High School Public Safety Commission

The bill modifies s. 943.687, F.S., to extend from July 1, 2023, to July 1, 2025, the sunset date for the Marjory Stoneman Douglas High School Public Safety Commission.

Safe-School Officer Requirement

The bill modifies s. 1006.12, F.S., relating to safe-school officers, to align requirements among all sworn law enforcement officers serving as safe school officers.

The bill modifies requirements relating to school safety officer authority and training by:

- Clarifying that school safety officers have the power to make arrests on property owned or leased by a charter school in the district.
- Requiring that all safe school officers who are also sworn law enforcement officers must complete mental health crisis intervention training using a curriculum developed by a national organization with expertise in mental health crisis intervention. The training must improve the officer's knowledge and skills as a first responder to incidents involving students with emotional disturbance or mental illness, including de-escalation skills to ensure student and officer safety.
- Clarifying that a district school superintendent or charter school administrator, or a respective designee, is responsible for notifying the county sheriff and the OSS after certain misconduct committed by a safe-school officer.

Coach Aaron Feis Guardian Program

The bill clarifies requirements related to school guardians. Specifically, the bill clarifies that:

- An individual must satisfy the background screening, psychological evaluation, and drug test requirements and be approved by the sheriff before participating in any school guardian program training.
- Only a sheriff may conduct school guardian program training.

School District Requirements Related to School Safety

Emergency Response Policies and Procedures

The bill modifies s. 1006.07, F.S., to provide for consistent application of emergency drill requirements across all school districts. The Bill requires the SBE to refer to recommendations provided in published reports of the Marjory Stoneman Douglas High School Public Safety Commission (commission), consult with state and local constituencies, and adopt rules establishing minimum requirements for school district policies and procedures related to emergency response and drills. The SBE's rules must be adopted by August 1, 2023, and must:

- Define, at a minimum, "emergency drill," "active threat," and "after-action report."
- Establish minimum requirements related to the timing, frequency, participation, training, notification, accommodations, and responses to threat situations.
- Specifically address incident type, school level, school type, and student and school characteristics.
- Require all types of emergency drills to be conducted no less frequently than on an annual basis.

The bill requires sheriffs to coordinate with the district school safety specialist to determine the necessary law enforcement officers responsible for responding to a school in the event of an active assailant emergency, and requires schools to notify at least 24 hours before a drill the designated law enforcement officers, who must be physically present on campus and directly involved in the execution of active assailant drills.

To support family reunification following an emergency, the bill requires each district school board and charter school governing board to adopt, in coordination with local law enforcement agencies and local governments, a family reunification plan to reunite students and employees with their families in the event that a school is closed or unexpectedly evacuated due to a natural or manmade disaster. This reunification plan must be reviewed annually and updated, as applicable, and must consider:

- The integration of student information and notification systems to facilitate reunification after a natural or manmade disaster;
- The provision of accurate and real-time verification of reunification, including student identification through a connection to the student information system;
- Parent or guardian custodial verification;
- A verifiable chain of custody; and
- The provision of real-time reporting and status of students and staff.

The bill also amends s. 1006.1493, F.S., to require that the Florida Safe Schools Assessment Tool (FSSAT) address policies and procedures to prepare for and respond to natural or manmade disasters or emergencies, including plans to reunite students and employees with families after a school is closed or unexpectedly evacuated due to such disasters or emergencies.

Threat Assessment Teams

The bill modifies s. 1006.07, F.S., relating to threat assessment teams (TATs). Specifically, the bill requires that all members of the TAT be involved in the threat assessment process from start to finish, including the determination of the final disposition decision. This change may ensure that all members of the TAT are active participants in the entire threat assessment process.

School Environmental Safety Incident Reporting

The bill requires the Department of Education (DOE) to annually publish on its website the most recently available school environmental safety incident data along with other school accountability and performance data in a uniform, statewide format that is easy to read and understand.

Training for Youth Mental Health and Suicide Awareness and Assistance

The bill requires, no later than July 1, 2023, and annually thereafter by July 1, each school district to certify to the DOE, in a format determined by the DOE, that at least 80 percent of school personnel in elementary, middle, and high schools have received the required training for youth mental health awareness and assistance.

The bill requires each district school board to adopt policies to ensure that district schools and local mobile response teams use the same suicide screening instrument approved by the DOE.

Mobile Suspicious Activity Reporting Tool (FortifyFL)

The bill modifies s. 943.082, F.S., effective October 1, 2022, to support credible reporting through the FortifyFL application. The bill requires notification to parties reporting through FortifyFL that if, following investigation, it is determined that a person knowingly submitted a false tip through FortifyFL, the IP address of the device on which the tip was submitted will be provided to law enforcement agencies, and the reporting party may be subject to criminal penalties for a false report. In all other circumstances, unless the reporting party has chosen to disclose his or her identity, the report must remain anonymous.

Except as otherwise specified in the bill, 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:

An agency analysis has not been provided by the Florida Department of Education. However, the bill is clarifying currently required statutory mandates therefore a fiscal impact to state revenues or expenditures is unlikely. The analysis received from the Florida Department of Law Enforcement does not indicate a fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 943.082, 943.687, 1001.11, 1001.212, 1006.07, 1006.12, 1006.1493, and 1012.584.

IX. Additional Information:

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

CS by Appropriations on February 28, 2022:
The committee substitute removes from the bill the provisions authorizing:

- The Commissioner of Education and the state board to direct a district school board to withhold the salary of a superintendent, or school board members if the superintendent is appointed.
- The DOE Inspector General to investigate allegations of school safety violations by a district school board.

The committee substitute extends from July 1, 2023, to July 1, 2025, the sunset date for the Marjory Stoneman Douglas High School Public Safety Commission. The proposed committee substitute also adds to the bill provisions requiring:

- The Department of Education to annually publish School Environmental Safety Incident Reporting (SESIR) data.
- School boards and mobile response teams are using the same DOE-approved suicide screening instrument.
- School boards to consult with local governments in reunification plans.
- Schools to notify participating law enforcement at least 24 hours prior to active assailant drill.
- Schools districts to certify that at least 80% of district personnel have received youth mental health awareness and assistance training by July 1, 2023, and annually thereafter by July 1.
- The Office of Safe Schools to consider in the development of the model family reunification plan required pursuant to the bill:
  - The integration of student information and notification systems to facilitate reunification after a natural or manmade disaster;
  - The provision of accurate and real-time verification of reunification, including student identification through a connection to the student information system;
  - Parent or guardian custodial verification;
  - A verifiable chain of custody; and
  - The provision of real-time reporting and status of students and staff.

The committee substitute modifies the requirement of the bill for the district school superintendent or charter school administrator to provide certain notifications concerning safe school officers to authorize a superintendent or administrator's designee to make the required notification.

B. Amendments:

None.

By Senator Gruters

23-00085B-22 2022802__

A bill to be entitled

An act relating to school safety; amending s. 943.082, F.S.; requiring the FortifyFL reporting tool to notify reporting parties that submitting false information may subject them to criminal penalties; providing that certain reports will remain anonymous; amending s. 1001.11, F.S.; requiring the Commissioner of Education to oversee and enforce compliance with requirements relating to school safety and security; requiring the commissioner to take specified actions under certain circumstances relating to noncompliance; amending s. 1001.20, F.S.; requiring the Department of Education's Office of Inspector General to investigate certain allegations if the commissioner determines that a district school board is unwilling or unable to address the allegations; amending s. 1001.212, F.S.; revising the duties of the Office of Safe Schools; amending s. 1006.07, F.S.; requiring certain law enforcement officers to be physically present and directly involved in active assailant emergency drills; requiring the State Board of Education to adopt rules; specifying the requirements for the rules; requiring district school boards and charter school governing boards to adopt family reunification plans; providing for the update and review of such plan; requiring all members of threat assessment teams to be involved in certain processes and decisions; amending s. 1006.12, F.S.; making technical changes; authorizing school safety officers to make arrests on

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property owned or leased by a charter school under a charter contract; requiring district school superintendents or charter school administrators, instead of school districts, to notify county sheriffs and the Office of Safe Schools of certain safe-school officer-related incidents; specifying training requirements for certain safe-school officers; amending s. 1006.1493, F.S.; requiring the Florida Safe Schools Assessment Tool to address policies and procedures to prepare for and respond to natural and manmade disasters; amending s. 1008.32, F.S.; authorizing the State Board of Education to direct a school district to suspend the salaries of certain officials if the state board determines the district school board is unwilling or unable to comply with law or state board rule; providing effective dates.

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

Section 1. Effective October 1, 2022, paragraph (c) is added to subsection (2) of section 943.082, Florida Statutes, to read:

943.082 School Safety Awareness Program.—

(2) The reporting tool must notify the reporting party of the following information:

(c) That if, following an investigation, it is determined that a person knowingly submitted a false tip through FortifyFL, the Internet protocol (IP) address of the device on which the tip was submitted will be provided to law enforcement agencies

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for further investigation, and the reporting party may be subject to criminal penalties under s. 837.05. In all other circumstances, unless the reporting party has chosen to disclose his or her identity, the report will remain anonymous.

Section 2. Subsection (9) of section 1001.11, Florida Statutes, is amended to read:

1001.11 Commissioner of Education; other duties.—

(9) The commissioner shall oversee and enforce compliance with the requirements relating to school safety and security ~~requirements of the Marjory Stoneman Douglas High School Public Safety Act, chapter 2018-3, Laws of Florida,~~ by school districts; district school superintendents; and public schools, including charter schools. Upon notification by the Office of Safe Schools of a school district's substantiated noncompliance with school safety and security requirements, the commissioner must require the district school board to withhold further payment of the salary of the superintendent, as authorized under s. 1001.42(13)(b). Upon notification by the Office of Safe Schools that a charter school has failed to comply with the requirements relating to school safety and security, the commissioner must facilitate compliance by charter schools by recommending actions to the district school board pursuant to s. 1002.33. The commissioner must facilitate compliance to the maximum extent provided under law, identify incidents of noncompliance, and impose or recommend to the State Board of Education, the Governor, or the Legislature enforcement and sanctioning actions pursuant to s. 1008.32 and other authority granted under law.

Section 3. Paragraph (e) of subsection (4) of section

1001.20, Florida Statutes, is amended to read:

1001.20 Department under direction of state board.—

(4) The Department of Education shall establish the following offices within the Office of the Commissioner of Education which shall coordinate their activities with all other divisions and offices:

(e) *Office of Inspector General.*—Organized using existing resources and funds and responsible for promoting accountability, efficiency, and effectiveness and detecting fraud and abuse within school districts, the Florida School for the Deaf and the Blind, and Florida College System institutions in Florida. If the Commissioner of Education determines that a district school board, the Board of Trustees for the Florida School for the Deaf and the Blind, or a Florida College System institution board of trustees is unwilling or unable to address substantiated allegations made by any person relating to waste, fraud, or financial mismanagement within the school district, the Florida School for the Deaf and the Blind, or the Florida College System institution, the office must ~~shall~~ conduct, coordinate, or request investigations into such substantiated allegations. If the Commissioner of Education determines that a district school board is unwilling or unable to address credible allegations made by any person relating to compliance with the requirements relating to school safety and security, the office must conduct, coordinate, or request investigations into such allegations. The office shall investigate allegations or reports of possible fraud or abuse against a district school board made by any member of the Cabinet; the presiding officer of either house of the Legislature; a chair of a substantive or

appropriations committee with jurisdiction; or a member of the board for which an investigation is sought. The office shall have access to all information and personnel necessary to perform its duties and shall have all of its current powers, duties, and responsibilities authorized in s. 20.055.

Section 4. Present subsections (14) and (15) of section 1001.212, Florida Statutes, are redesignated as subsections (15) and (16), respectively, a new subsection (14) and subsection (17) are added to that section, and subsections (2) and (6) of that section are amended, to read:

1001.212 Office of Safe Schools.—There is created in the Department of Education the Office of Safe Schools. The office is fully accountable to the Commissioner of Education. The office shall serve as a central repository for best practices, training standards, and compliance oversight in all matters regarding school safety and security, including prevention efforts, intervention efforts, and emergency preparedness planning. The office shall:

(2) Provide ongoing professional development opportunities to school district and charter school personnel.

(6) Coordinate with the Department of Law Enforcement to provide a unified search tool, known as the Florida School Safety Portal, ~~centralized integrated data repository and data analytics resources~~ to improve access to timely, complete, and accurate information ~~integrating data~~ from, at a minimum, ~~but not limited to,~~ the following data sources ~~by August 1, 2019~~:

(a) Social media Internet posts;

(b) The Department of Children and Families;

(c) The Department of Law Enforcement;

(d) The Department of Juvenile Justice;

(e) The mobile suspicious activity reporting tool known as FortifyFL;

(f) School environmental safety incident reports collected under subsection (8); and

(g) Local law enforcement.

Data that is exempt or confidential and exempt from public records requirements retains its exempt or confidential and exempt status when incorporated into the centralized integrated data repository. To maintain the confidentiality requirements attached to the information provided to the centralized integrated data repository by the various state and local agencies, data governance and security shall ensure compliance with all applicable state and federal data privacy requirements through the use of user authorization and role-based security, data anonymization and aggregation and auditing capabilities. To maintain the confidentiality requirements attached to the information provided to the centralized integrated data repository by the various state and local agencies, each source agency providing data to the repository shall be the sole custodian of the data for the purpose of any request for inspection or copies thereof under chapter 119. The department shall only allow access to data from the source agencies in accordance with rules adopted by the respective source agencies and the requirements of the Federal Bureau of Investigation Criminal Justice Information Services security policy, where applicable.

(14) Develop, in coordination with the Division of

Emergency Management; other federal, state, and local law enforcement agencies; fire and rescue agencies; and first responder agencies, a model family reunification plan for use by child care facilities, public K-12 schools, and public postsecondary educational institutions that are closed or unexpectedly evacuated due to a natural or manmade disaster. This model plan must be reviewed annually and updated, as applicable.

(17) Maintain a current directory of public and private school-based diversion programs and cooperate with each judicial circuit and the Department of Juvenile Justice to facilitate their efforts to monitor and enforce each governing body's compliance with s. 985.12.

Section 5. Paragraph (a) of subsection (4) and paragraph (a) of subsection (7) of section 1006.07, Florida Statutes, are amended, and paragraph (d) is added to subsection (6) of that section, to read:

1006.07 District school board duties relating to student discipline and school safety.—The district school board shall provide for the proper accounting for all students, for the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students, including:

(4) EMERGENCY DRILLS; EMERGENCY PROCEDURES.—

(a) Formulate and prescribe policies and procedures, in consultation with the appropriate public safety agencies, for emergency drills and for actual emergencies, including, but not limited to, fires, natural disasters, active assailant and hostage situations, and bomb threats, for all students and

faculty at all public schools of the district composed ~~comprised~~ of grades K-12, pursuant to State Board of Education rules. Drills for active assailant and hostage situations must ~~shall~~ be conducted in accordance with developmentally appropriate and age-appropriate procedures, as specified in State Board of Education rules ~~at least as often as other emergency drills~~. Law enforcement officers responsible for responding to the school in the event of an active assailant emergency, as determined necessary by the sheriff in coordination with the district's school safety specialist, must be physically present on campus and directly involved in the execution of active assailant emergency drills. District school board policies must ~~shall~~ include commonly used alarm system responses for specific types of emergencies and verification by each school that drills have been provided as required by law, State Board of Education rules, and fire protection codes and may provide accommodations for drills conducted by exceptional student education centers. District school boards shall establish emergency response and emergency preparedness policies and procedures that include, but are not limited to, identifying the individuals responsible for contacting the primary emergency response agency and the emergency response agency ~~that is~~ responsible for notifying the school district for each type of emergency. The State Board of Education shall refer to recommendations provided in reports published pursuant to s. 943.687 for guidance and, by August 1, 2023, consult with state and local constituencies to adopt rules applicable to the requirements of this subsection which, at a minimum, define the terms "emergency drill," "active threat," and "after-action report" and establish minimum emergency drill

policies and procedures related to the timing, frequency, participation, training, notification, accommodations, and responses to threat situations by incident type, school level, school type, and student and school characteristics. The rules must require all types of emergency drills to be conducted no less frequently than on an annual school year basis.

(6) SAFETY AND SECURITY BEST PRACTICES.—Each district school superintendent shall establish policies and procedures for the prevention of violence on school grounds, including the assessment of and intervention with individuals whose behavior poses a threat to the safety of the school community.

(d) Each district school board and charter school governing board shall adopt, in coordination with local law enforcement agencies, a family reunification plan to reunite students and employees with their families in the event that a school is closed or unexpectedly evacuated due to a natural or manmade disaster. This reunification plan must be reviewed annually and updated, as applicable.

(7) THREAT ASSESSMENT TEAMS.—Each district school board shall adopt policies for the establishment of threat assessment teams at each school whose duties include the coordination of resources and assessment and intervention with individuals whose behavior may pose a threat to the safety of school staff or students consistent with the model policies developed by the Office of Safe Schools. Such policies must include procedures for referrals to mental health services identified by the school district pursuant to s. 1012.584(4), when appropriate, and procedures for behavioral threat assessments in compliance with the instrument developed pursuant to s. 1001.212(12).

(a) A threat assessment team shall include persons with expertise in counseling, instruction, school administration, and law enforcement. All members of the threat assessment team must be involved in the threat assessment process and final decisionmaking. The threat assessment teams shall identify members of the school community to whom threatening behavior should be reported and provide guidance to students, faculty, and staff regarding recognition of threatening or aberrant behavior that may represent a threat to the community, school, or self. Upon the availability of the behavioral threat assessment instrument developed pursuant to s. 1001.212(12), the threat assessment team shall use that instrument.

Section 6. Present subsection (6) of section 1006.12, Florida Statutes, is redesignated as subsection (8), a new subsection (6) and subsection (7) are added to that section, and paragraph (c) of subsection (1), paragraphs (a) and (b) of subsection (2), and subsection (5) of that section are amended, to read:

1006.12 Safe-school officers at each public school.—For the protection and safety of school personnel, property, students, and visitors, each district school board and school district superintendent shall partner with law enforcement agencies or security agencies to establish or assign one or more safe-school officers at each school facility within the district, including charter schools. A district school board must collaborate with charter school governing boards to facilitate charter school access to all safe-school officer options available under this section. The school district may implement any combination of the options in subsections (1)-(4) to best meet the needs of the

school district and charter schools.

(1) SCHOOL RESOURCE OFFICER.—A school district may establish school resource officer programs through a cooperative agreement with law enforcement agencies.

~~(c) Complete mental health crisis intervention training using a curriculum developed by a national organization with expertise in mental health crisis intervention. The training shall improve officers' knowledge and skills as first responders to incidents involving students with emotional disturbance or mental illness, including de-escalation skills to ensure student and officer safety.~~

(2) SCHOOL SAFETY OFFICER.—A school district may commission one or more school safety officers for the protection and safety of school personnel, property, and students within the school district. The district school superintendent may recommend, and the district school board may appoint, one or more school safety officers.

(a) School safety officers shall undergo criminal background checks, drug testing, and a psychological evaluation and be law enforcement officers, as defined in s. 943.10(1), certified under ~~the provisions of~~ chapter 943 and employed by either a law enforcement agency or by the district school board. If the officer is employed by the district school board, the district school board is the employing agency for purposes of chapter 943, and must comply with ~~the provisions of~~ that chapter.

(b) A school safety officer has and shall exercise the power to make arrests for violations of law on district school board property or on property owned or leased by a charter

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school under a charter contract, as applicable, and to arrest persons, whether on or off such property, who violate any law on such property under the same conditions that deputy sheriffs are authorized to make arrests. A school safety officer has the authority to carry weapons when performing his or her official duties.

(5) NOTIFICATION.—The district school superintendent or charter school administrator ~~school district~~ shall notify the county sheriff and the Office of Safe Schools immediately after, but no later than 72 hours after:

(a) A safe-school officer is dismissed for misconduct or is otherwise disciplined.

(b) A safe-school officer discharges his or her firearm in the exercise of the safe-school officer's duties, other than for training purposes.

(6) CRISIS INTERVENTION TRAINING.—Each safe-school officer who is also a sworn law enforcement officer shall complete mental health crisis intervention training using a curriculum developed by a national organization with expertise in mental health crisis intervention. The training must improve the officer's knowledge and skills as a first responder to incidents involving students with emotional disturbance or mental illness, including de-escalation skills to ensure student and officer safety.

(7) LIMITATIONS.—An individual must satisfy the background screening, psychological evaluation, and drug test requirements and be approved by the sheriff before participating in any training required by s. 30.15(1)(k), which may be conducted only by a sheriff.

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If a district school board, through its adopted policies, procedures, or actions, denies a charter school access to any safe-school officer options pursuant to this section, the school district must assign a school resource officer or school safety officer to the charter school. Under such circumstances, the charter school's share of the costs of the school resource officer or school safety officer may not exceed the safe school allocation funds provided to the charter school pursuant to s. 1011.62(13) and shall be retained by the school district.

Section 7. Paragraph (a) of subsection (2) of section 1006.1493, Florida Statutes, is amended to read:

1006.1493 Florida Safe Schools Assessment Tool.—

(2) The FSSAT must help school officials identify threats, vulnerabilities, and appropriate safety controls for the schools that they supervise, pursuant to the security risk assessment requirements of s. 1006.07(6).

(a) At a minimum, the FSSAT must address all of the following components:

1. School emergency and crisis preparedness planning;

2. Security, crime, and violence prevention policies and procedures;

3. Physical security measures;

4. Professional development training needs;

5. An examination of support service roles in school safety, security, and emergency planning;

6. School security and school police staffing, operational practices, and related services;

7. School and community collaboration on school safety; ~~and~~

8. Policies and procedures for school officials to prepare for and respond to natural and manmade disasters, including family reunification plans to reunite students and employees with their families after a school is closed or unexpectedly evacuated due to such disasters; and

9. A return on investment analysis of the recommended physical security controls.

Section 8. Paragraph (e) is added to subsection (4) of section 1008.32, Florida Statutes, to read:

1008.32 State Board of Education oversight enforcement authority.—The State Board of Education shall oversee the performance of early learning coalitions, district school boards, and Florida College System institution boards of trustees in enforcement of all laws and rules. District school boards and Florida College System institution boards of trustees shall be primarily responsible for compliance with law and state board rule.

(4) If the State Board of Education determines that an early learning coalition, a district school board, or a Florida College System institution board of trustees is unwilling or unable to comply with law or state board rule within the specified time, the state board has ~~shall have~~ the authority to initiate any of the following actions:

(e) When the noncompliance is related to school safety overseen by a district school board, direct the school district to suspend the salary of the district school superintendent and, if the superintendent is appointed, the salaries of the district school board members until such time as the noncompliance is remedied.

Section 9. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2022.

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The Florida Senate

APPEARANCE RECORD

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2/28/22
Meeting Date

APPROPS
Committee

802
Bill Number or Topic

Amendment Barcode (if applicable)

Name Alliance 4 Public Schools
Angie Gallo

Phone 407-718-9925

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Street

Email

City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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)

2/28/22
Meeting Date

Approps
Committee

The Florida Senate
APPEARANCE RECORD

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802
Bill Number or Topic

Amendment Barcode (if applicable)

Name Dr. Danielle Thomas

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City State Zip

Email thomas@fsba.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 School Boards Association

☐ 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 Appropriations

BILL:	CS/SB 898
INTRODUCER:	Community Affairs Committee; and Senator Stewart and others
SUBJECT:	Tenant Safety
DATE:	February 25, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hunter	Ryon	CA	**Fav/CS**
2.	Davis	Betta	AEG	**Recommend: Favorable**
3.	Davis	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 898, designated as "Miya's Law," makes changes to Florida's Residential Landlord and Tenant Act as well as public lodging establishment laws in an effort to provide safety and security to apartment tenants.

The bill directs landlords or licensees of transient and nontransient apartments to require that all employees undergo a background screening performed by a consumer reporting agency (CRA) done in accordance with the federal Fair Credit Reporting Act (FCRA) as a condition of employment. A person may be disqualified from employment based on the background screening if the person has been found guilty or plead no contest to certain offenses, including those involving violence and disregard for safety.

Under the bill, apartments must maintain a log accounting for the issuance and return of all keys for each dwelling unit, and establish policies for the issuance and return of unit keys, as well as storage and access to unissued keys. An apartment's key logs and employee background screening files are subject to the Department of Business and Professional Regulation's (DBPR) annual inspection of apartments. This portion of the bill takes effect on January 1, 2023.

The bill changes from 12 hours to 24 hours the "reasonable notice" that a landlord must give a tenant for entry of a unit for the purpose of repair for all tenancies.

The DBPR has estimated it will need five full-time positions and $475,480 from the Hotel and Restaurant Trust Fund due to workload and regulatory duties to ensure public lodging establishments provide proof of compliance with conducting employee background screening checks. It is anticipated there will be an indeterminate increase in fines to the trust fund.

Except as otherwise expressly provided, the bill takes effect on July 1, 2022.

II. Present Situation:

The Florida Residential Landlord and Tenant Act

Residential tenancies are governed by the Florida Residential Landlord and Tenant Act (act).[1]

The landlord is the owner or lessor of a dwelling unit. The tenant is a person entitled to occupy a dwelling unit under a rental agreement, in which the tenant makes periodic payments of rent to the landlord.[2] When people enter into a landlord and tenant relationship, as evidenced by a rental agreement, each party commits to abide by certain legal obligations and responsibilities. Rental agreements may be written or oral.[3] Oral rental agreements are for a duration of less than one year.[4] Every rental agreement carries with it an obligation of good faith in both performance and enforcement.[5] Landlords are entitled to collect security deposits from tenants and hold the deposits as security against the performance of the rental agreement.[6]

Landlords and tenants have different obligations to maintain the property. Landlords must comply with building, housing, and health codes, and for dwelling units other than a single-family home or a duplex, a landlord must provide for:

- The extermination of insects and rodents;
- Locks and keys;
- The clean and safe condition of common areas;
- Garbage removal; and
- Heat during winter, running water, and hot water.[7]

Tenants, in turn, must:

- Comply with building, housing, and health codes that apply to tenants;
- Keep the premises clean and sanitary;
- Keep plumbing fixtures clean and sanitary and in repair;
- Use and operate electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other appliances in a reasonable manner;
- Not destroy or damage the premises or property or allow others to do so; and
- Not disturb the peace.[8]

[1] Part II of ch. 83, F.S., s. 83.40, F.S.
[2] Sections 83.43(3), (4), and (6), F.S.
[3] Section 83.43(7), F.S.
[4] *Id.*
[5] Section 83.44, F.S.
[6] Section 83.43(12), F.S.
[7] Sections 83.51(1)(a) and (2)(a), F.S.
[8] Section 83.52, F.S.

A landlord may enter a dwelling unit at any time for the protection or preservation of the premises.[9] The landlord may enter a dwelling unit with reasonable notice to the tenant and at a reasonable time for the purpose of repair of the premises. "Reasonable notice" for the purpose of repair is a notice given at least 12 hours prior to the entry, and reasonable time for the purpose of repair is defined as between the hours of 7:30 a.m. and 8:00 p.m.[10] A landlord cannot abuse the right of access nor use it to harass the tenant.[11]

Transient and Non-transient Apartments

The Division of Hotels and Restaurants (division) within the DBPR is the state agency charged with enforcing the provisions of ch. 509, F.S., relating to the regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare.

The division licenses transient and nontransient apartments in the state. Any nontransient apartment renting four units or less or any apartment building inspected by the United States Department of Housing and Urban Development (HUD) or other entity acting on its behalf that is designated primarily as housing for tenants at least 62 years of age is exempt from division licensure.[12]

The regulation of public lodging establishments includes, but is not limited to, sanitation standards, inspections, and training and testing of personnel. Both transient and nontransient apartments are inspected by the division at least annually.[13] For purposes of performing required inspections and the enforcement, the division has the right of entry and access to public lodging establishments at any reasonable time.[14]

The term "public lodging establishments" includes transient and nontransient public lodging establishments.[15] The principal differences between transient and nontransient public lodging establishments are the number of times that the establishments are rented in a calendar year and the duration of the rentals.

A "transient public lodging establishment" is defined in s. 509.013(4)(a)1., F.S., as:

> any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings *which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month*, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

[9] Section 83.53(2), F.S.
[10] Section 83.53(2), F.S.
[11] Section 83.53(3), F.S.
[12] Section 509.013 (4)(b), F.S.
[13] Section 509.032 (2)(a), F.S.
[14] Section 509.032 (2)(b), F.S.
[15] Section 509.013(4)(a), F.S.

A "nontransient public lodging establishment" is defined in s. 509.013(4)(a)2., F.S., as:

> any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings *which is rented to guests for periods of at least 30 days or 1 calendar month*, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

Public lodging establishments are classified as a hotel, motel, vacation rental, nontransient apartment, transient apartment, bed and breakfast inn, or timeshare project.[16]

A nontransient apartment is defined as a building or complex of buildings in which 75 percent or more of the units are available for rent to nontransient tenants. A transient apartment is a building or complex of buildings in which more than 25 percent of the units are advertised or held out to the public as available for transient occupancy.[17]

Safety Regulations

Section 509.211, F.S., dictates safety regulations of public lodging establishments. The law requires every bedroom or apartment in a public lodging establishment to be equipped with an approved locking device on each door opening to the outside, to an adjoining room or apartment, or to a hallway.[18] Every public lodging establishment that is three or more stories in height must have safe and secure railings on all balconies, platforms, and stairways, and all such railings must be properly maintained and repaired.[19]

Employee Background Screenings

Florida provides standard procedures for screening a prospective employee where the Legislature has determined it is necessary to conduct a criminal history background check to protect vulnerable persons.[20]

By law, when a criminal history check or a duty to disclose the absence of a criminal history check is mandated by state law, the criminal history check must include a Florida criminal history provided by the Florida Department of Law Enforcement (FDLE). Such Florida criminal history information may be provided by a private vendor only if that information is directly obtained from the FDLE for each request.[21]

A Level 1 screening is a name-based demographic screening that includes a statewide criminal record check through the FDLE.[22] A Level 1 background screening involves a name-based

[16] Section 509.242(1), F.S.
[17] *Id.*
[18] Section 509.211(1), F.S.
[19] Section 509.211(3), F.S.
[20] Sections 435.01-435.12, F.S.
[21] Section 943.053(12), F.S.
[22] Section 435.03, F.S. A Level 1 criminal history record check is "a state-only name-based check." Florida Department of Law Enforcement (FDLE), *Definitions*, https://www.fdle.state.fl.us/Background-Checks/VECHS-FAQs/Definitions.aspx (last visited Feb. 9, 2022).

search of Florida records, including employment history, state and local criminal history check, and a search of the National Sex Offender Public Website.[23] A Level 1 screening may be paid for and conducted through the FDLE's website, which provides immediate results.[24]

A Level 2 screening consists of a fingerprint-based search of the FDLE and the Federal Bureau of Investigation databases for state and national criminal arrest records.[25] A Level 1 screening and Level 2 screening have the same disqualifying offenses, including, but not limited to, domestic violence, sexual misconduct, murder, and other violent or sexually-based offenses.[26]

The state mandates background screenings for many professions, including at least a Level 1 screening, and on an agency-determined basis a Level 2, for all state employees.[27] Many professions require a background screening that interact with vulnerable persons like minors or vulnerable adults, whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.[28] Examples of professions requiring background screening include employees who work in schools, substance abuse and mental health facilities, nursing homes, and massage therapists.

For athletic coaches authorized in the state, a background screening conducted by a commercial CRA in compliance with the federal FCRA, which includes a Level 1 background screening and a search of designated identifying information against listed sexual predator and sexual offender internet sites, is also deemed to satisfy the specified requirements.[29]

Third Party Background Screening

There are hundreds of companies engaged in employment and tenant background screening across the United States.[30] These companies are defined as "consumer reporting agencies" (CRAs), pursuant to the FCRA and are regulated by both the Federal Trade Commission and Consumer Financial Protection Bureau.[31] The FCRA promotes the accuracy, fairness, and privacy of information that consumer reporting agencies and their related entities collect.[32] The FCRA governs the acts of CRAs, entities that furnish information to CRAs (furnishers), and individuals who use credit reports issued by CRAs. Specifically, CRAs and their furnishers must adopt methods to ensure the information they collect and report is accurate.

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[23] Section 435.03(1), F.S.
[24] FDLE, State of Florida Criminal History Records Check, *available at* http://www.fdle.state.fl.us/Criminal-History-Records/Florida-Checks.aspx (last visited Feb. 9, 2022).
[25] Section 435.04, F.S.
[26] Sections 435.03(2) and 435.04(2), F.S.
[27] Section 110.1127, F.S.
[28] Section 435.02(6), F.S.
[29] Section 943.0438(2)(a)2., F.S.
[30] Professional Background Screening Association (PBSA), About PBSA, *available at* https://thepbsa.org/about-us/about-pbsa/ (last visited Feb. 9, 2022.)
[31] *Id.*
[32] Consumer Finance Bureau, *A Summary of Your Rights Under the Fair Credit Reporting Act* (Sept. 18, 2018), 12 CFR 1022, *available at* https://www.consumer.ftc.gov/articles/pdf-0096-fair-credit-reporting-act.pdf (last visited Feb. 9, 2022). *See also*, Federal Trade Commission, *Fair Credit Reporting Act*, https://www.ftc.gov/enforcement/statutes/fair-credit-reporting-act (last visited Feb. 9, 2022).

Individuals can review the information a CRA has collected on them to ensure that it is accurate, and may dispute its accuracy—which triggers a CRA's and furnisher's duty to reinvestigate the information. Individuals may also request to review the information a CRA has in his or her file, the sources of the information, and the identity of those to whom the information was disclosed.

A CRA cannot provide information in a consumer report to anyone who does not have a specified purpose in the FCRA.[33]

Miya Marcano

On September 24, 2021, Miya Marcano, a student at Valencia College, went missing from her apartment in Orlando, Florida, where she also worked at the front office. She was later found dead miles from her apartment.[34]

Investigators for the Orange County Sheriff's Office said Marcano was taken from her apartment by Armando Caballero, who was a maintenance worker at the same apartment complex. It is alleged that he used a master key fob for the apartment complex to enter her apartment. Caballero was found dead by apparent suicide a few days after Marcano went missing.[35]

III. Effect of Proposed Changes:

The bill, cited as "Miya's Law," creates s. 83.515, F.S., to direct landlords of transient and nontransient apartments to require all employees to undergo a background screening performed by a consumer reporting agency done in accordance with the federal Fair Credit Reporting Act as a condition of employment. The screening must include a screening of criminal history records and sexual predator and sexual offender registries of all states and the District of Columbia.

The bill authorizes landlords to disqualify a person from employment based on the background screening if the person has been convicted of or found guilty of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, any of the following offenses:

- A criminal offense involving disregard for the safety of others which, if committed in Florida, is a felony or first degree misdemeanor or, if committed in another state, would be a felony or a misdemeanor of the first degree if committed in Florida; or
- A criminal offense committed in any jurisdiction which involves violence, including, but not limited to, murder, sexual battery, robbery, carjacking, home-invasion robbery, and stalking.

Effective January 1, 2023, the bill amends s. 509.211 F.S., to direct all public lodging establishments licensed by the Division of Hotels and Restaurants as a transient or nontransient

[33] Permissible purposes include employment, insurance underwriting that involves the consumer, evaluating the consumer's eligibility for licensure or other governmental benefit that considers the applicants financial responsibility or status, or a legitimate business need. 15 U.S.C. § 1681b(a).
[34] Cristobal Reyes, *Miya Marcano's family again blasts Orange sheriff after autopsy released: 'Precious moments' lost*, Orlando Sentinel, Orlando Sentinel (Dec. 28, 2021), *available at* https://www.orlandosentinel.com/news/crime/os-ne-miya-marcano-autopsy-response-20211228-svqnw6bdozaghnoijjevdgkgoi-story.html (last visited Feb. 9, 2022); Vanessa Etienne, Miya Marcano Cause of Death Ruled a 'Homicide by Undetermined Means': Medical Examiner, People (Dec. 29, 2021), available at https://people.com/crime/miya-marcano-cause-of-death-ruled-a-homicide-by-undetermined-means-by-medical-examiner/ (last visited Feb. 9, 2022).
[35] *Id*.

apartment to require all employees to undergo a background screening as a condition of employment, as provided in s. 83.515, F.S., created in section 1 of the bill. Such licensed apartments must also maintain a log accounting for the issuance and return of all keys for each dwelling unit, and establish policies for the issuance and return of unit keys, as well as storage and access to unissued keys. Upon request during the division's annual inspection of the premises, a licensee must provide proof of compliance with these requirements.

Finally, the bill amends s. 83.53, F.S., to change from 12 hours to 24 hours the "reasonable notice" that a landlord must give a tenant for entry of a unit for the purpose of repair.

Except as otherwise provided, 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:

The DBPR anticipates an indeterminate increase in fines collected due to noncompliance.[36]

B. Private Sector Impact:

The cost of the background screening will be borne by either an applicant/employee or the apartment landlord/licensee; however the bill does not specify. If the cost is to be borne by the apartment landlord/licensee, this expense may be passed on to apartment

[36] *See* Department of Business and Professional Regulation, *2022 Agency Legislative Bill Analysis for SB 898* at 4 (Nov. 12, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

tenants. Background screening requirements may have a negative impact on workforce availability in affected lodging establishments.

The Division of Hotels and Restaurants currently licenses 19,261 transient and non-transient apartments. According to the DBPR, if third-party screening rates are similar to the FDLE rate of $72.99 per person, the total fiscal impact to license holders to process one employee per license is $1,405,860. However, the associated costs will be much greater because most properties will have multiple employees requiring screening.[37]

Third-party background screening organizations will experience a significant increase in demand for their services due to this bill.

C. Government Sector Impact:

The bill will have a negative fiscal impact on state expenditures due to costs involved related to additional items for the DBPR to review during annual inspections of apartments. The DBPR estimates a cost of $475,480 ($346,795 recurring) to the Hotel and Restaurant Trust Fund and a need of five full-time positions due to workload and regulatory duties to ensure public lodging establishments provide proof of compliance with conducting employee background screening checks.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 34-39 of the bill requires a "third-party" background check conducted by a consumer reporting agency. According to FDLE, landlords will be responsible for finding a third-party company that can meet the screening criteria in the bill. The FDLE is unaware of the existence of a vendor with this capability.[38]

The bill does not specify a date in which existing apartment employees must obtain a background screening.

It is unclear how the effective date in section 4 of the bill is intended to operate in concert with section 2 of the bill.

The sponsor may consider incorporating reference to electronic programmable key cards to the bill provision requiring apartments to maintain a log accounting for the issuance and return of dwelling unit keys.

[37] *Id.* at 7.
[38] *See* Florida Department of Law Enforcement, *2022 Agency Legislative Bill Analysis for SB 898* at 4 (Dec. 10, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 83.53 and 509.211.

This bill creates section 83.515 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 January 25, 2022:
The committee substitute removes the requirement that a background screening required under the bill be performed by a consumer reporting agency accredited by the Professional Background Screening Association and replaces it with the requirement that the background screening be done in accordance with the federal Fair Credit Reporting Act.

B. Amendments:

None.

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

 296406

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/28/2022	.	
	.	
	.	
	.	

The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment

Delete line 43
and insert:
adjudication, any of the following offenses within the preceding 5 years:

By the Committee on Community Affairs; and Senators Stewart, Perry, Taddeo, Book, Berman, Bracy, Polsky, and Cruz

578-02326-22 2022898c1

A bill to be entitled

An act relating to tenant safety; providing a short title; creating s. 83.515, F.S.; requiring landlords of nontransient or transient apartments to require employees to undergo background screenings as a condition of employment; specifying requirements for the employee background screenings; authorizing landlords to disqualify persons from employment under certain circumstances relating to criminal offenses; amending s. 83.53, F.S.; revising what constitutes reasonable notice for repairs of dwelling units; amending s. 509.211, F.S.; requiring public lodging establishments licensed as nontransient or transient apartments to take certain actions relating to employee background screenings and keys for dwelling units; requiring such establishments to provide proof of compliance to the Division of Hotels and Restaurants of the Department of Business and Professional Regulation upon request; providing effective dates.

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

Section 1. This act may be cited as "Miya's Law."

Section 2. Section 83.515, Florida Statutes, is created to read:

83.515 Background screening of apartment employees; employment disqualification.—

(1) The landlord of a public lodging establishment

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

578-02326-22 2022898c1

classified under s. 509.242(1)(d) or (e) as a nontransient apartment or transient apartment, respectively, must require that each employee of the establishment undergo a background screening as a condition of employment.

(2) The background screening required under subsection (1) must be performed by a consumer reporting agency in accordance with the federal Fair Credit Reporting Act, and must include a screening of criminal history records and sexual predator and sexual offender registries of all 50 states and the District of Columbia.

(3) A landlord may disqualify a person from employment if the person has been convicted or found guilty of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, any of the following offenses:

(a) A criminal offense involving disregard for the safety of others which, if committed in this state, is a felony or a misdemeanor of the first degree or, if committed in another state, would be a felony or a misdemeanor of the first degree if committed in this state.

(b) A criminal offense committed in any jurisdiction which involves violence, including, but not limited to, murder, sexual battery, robbery, carjacking, home-invasion robbery, and stalking.

Section 3. Subsection (2) of section 83.53, Florida Statutes, is amended to read:

83.53 Landlord's access to dwelling unit.—

(2) The landlord may enter the dwelling unit at any time for the protection or preservation of the premises. The landlord may enter the dwelling unit upon reasonable notice to the tenant

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

and at a reasonable time for the purpose of repair of the premises. "Reasonable notice" for the purpose of repair is notice given at least 24 ~~12~~ hours prior to the entry, and reasonable time for the purpose of repair shall be between the hours of 7:30 a.m. and 8:00 p.m. The landlord may enter the dwelling unit when necessary for the further purposes set forth in subsection (1) under any of the following circumstances:

(a) With the consent of the tenant;

(b) In case of emergency;

(c) When the tenant unreasonably withholds consent; or

(d) If the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments. If the rent is current and the tenant notifies the landlord of an intended absence, then the landlord may enter only with the consent of the tenant or for the protection or preservation of the premises.

Section 4. Effective January 1, 2023, subsection (5) is added to section 509.211, Florida Statutes, to read:

509.211 Safety regulations.—

(5) Each public lodging establishment licensed as a nontransient apartment or transient apartment shall do all of the following:

(a) Require that each employee of the licensee undergo a background screening as a condition of employment pursuant to s. 83.515.

(b) Maintain a log accounting for the issuance and return of all keys for each dwelling unit.

(c) Establish policies and procedures for the issuance and return of dwelling unit keys and regulating the storage of, and

access to, unissued keys.

Upon request during the division's annual inspection of the premises, a licensee must provide the division with proof of compliance with this subsection for the inspection.

Section 5. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2022.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Appropriations Committee

Subject: Committee Agenda Request

Date: February 22, 2022

I respectfully request that **Senate Bill #898**, relating to Tenant Safety, 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

2/28/22
Meeting Date

Appropriations
Committee

SB 898
Bill Number or Topic

Amendment Barcode (if applicable)

Name Kelly Mallette

Phone (850) 224-3427

Address 104 W Jefferson Street
Street

Email kelly@rlbookpa.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 Apartment Association

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2-28-22
Meeting Date

Appropriations
Committee

898
Bill Number or Topic

Amendment Barcode (if applicable)

Name Barbara DeVane

Phone 251-4280

Address 625 E Brevard St
Street

Email barbaradevane@yahoo.com

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:
FL NOW

☐ 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 Appropriations

BILL:	CS/SB 1060
INTRODUCER:	Education Committee and Senator Hutson
SUBJECT:	Florida Bright Futures Scholarship Program Student Service Requirements
DATE:	February 27, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Palazesi	Bouck	ED	**Fav/CS**
2.	Grace	Sadberry	AP	**Favorable**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1060 modifies the eligibility requirements for the Florida Bright Futures Scholarship Program to include an option for students to use paid work hours in lieu of volunteer hours to qualify for a scholarship. Additionally, the bill requires a student to evaluate and reflect upon his or her paid work experience through papers or other presentations, and makes it optional for a student to identify a social or civic issue or a professional area and develop a plan for personal involvement or learning about the area.

The bill has an indeterminate fiscal impact. *See* Section V. Fiscal Impact Statement.

The takes effect on July 1, 2022.

II. Present Situation:

Florida Bright Futures Scholarship Program

In 1997,[1] the Florida Legislature created the Florida Bright Futures Scholarship Program (Bright Futures Program), a postsecondary scholarship program funded by the lottery. The intent of the Bright Futures Program was to reward any Florida high school graduate who merits recognition of high academic achievement and who enrolls in a degree program, certificate program, or applied technology program at an eligible Florida public or private postsecondary education

[1] Chapter 97-379, L.O.F.

institution.[2] Since 1997, the Bright Futures Program has disbursed $7.48 billion to over 2.9 million students.[3]

The Bright Futures Program consists of the following awards:
- Florida Academic Scholars (FAS);
- Florida Medallion Scholars (FMS);
- Florida Gold Seal CAPE Scholars (FGSC); and
- Florida Gold Seal Vocational Scholars (FGSV).[4]

Florida Academic Scholarship and Florida Medallion Scholarship

A Florida high school student who wishes to qualify for the FAS or FMS award must graduate from a Florida public high school with a standard high school diploma, graduate from a private high school registered with the Florida Department of Education (DOE), earn a general education diploma (GED), complete a home education program, or graduate from a non-Florida high school as an eligible student.[5] A student must also meet the following initial eligibility requirements:[6]

[2] Section 1009.53(1), F.S.
[3] Florida Department of Education, Office of Student Financial Assistance, *Florida Bright Futures Scholarship Disbursement History*, https://www.floridastudentfinancialaidsg.org//PDF/PSI/BFReportsD.pdf, (last visited Feb. 2, 2022).
[4] Section 1009.53(2), F.S.
[5] 2021-22 Bright Futures Student Handbook, *Chapter 1: Initial Eligibility Requirements* (Aug. 5, 2021), at 3, *available at* https://www.floridastudentfinancialaidsg.org/PDF/BFHandbookChapter1.pdf. An out-of-state student may qualify for a Bright Futures Scholarship if the student earned a high school diploma from a non-Florida school while living with a parent or guardian who is a Florida resident and on military or public service assignment away from Florida during the student's last year of high school. Florida Department of Education, *Florida Bright Futures Scholarship Program and the Out-Of-State Student* (2021-22), at 2, *available at* https://www.floridastudentfinancialaidsg.org/PDF/BFOOSGuide.pdf.
[6] 2021-22 Bright Futures Student Handbook, *Chapter 1: Initial Eligibility Requirements* (Aug. 5, 2021), at 3, *available at* https://www.floridastudentfinancialaidsg.org/PDF/BFHandbookChapter1.pdf.

Scholarship Type	16 High School Course Credits[7]	High School Weighted Bright Futures GPA	College Entrance Exams (ACT/SAT)[8]	Service Hours
FAS[9]	4 - English *(three must include substantial writing)* 4 - Mathematics *(at or above the Algebra I level)* 3 - Natural Science *(two must have substantial laboratory)* 3 - Social Science 2 - World Language *(sequential, in same language)*	3.50	29/1330	100 hours
FMS[10]		3.00	25/1210	75 hours

A student who has demonstrated academic merit through a recognition program may be eligible for a FAS or FMS award without having to meet the college entrance exam requirement. These merit recognition programs include:

- National Merit Finalists and Scholars;
- National Hispanic Scholars;
- Advanced International Certificate of Education (AICE) Diploma;
- International Baccalaureate (IB) Diploma; [11]

A FAS award recipient is eligible for an award equal to the amount necessary to pay 100 percent of tuition and applicable fees and an additional stipend for textbooks as specified in the General Appropriations Act (GAA).[12] A FMS award recipient is eligible for an award equal to the amount necessary to pay 75 percent of tuition and fees,[13] however, an eligible FMS recipient enrolled at a Florida College System (FCS) institution is eligible for an award amount equal to the amount necessary to pay 100 percent of tuition and fees.[14]

A student may receive a FAS or FMS award for a maximum of 100 percent of the number of credit hours required to complete an associate degree, baccalaureate degree, or postsecondary career certificate program.[15]

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[7] The required coursework aligns with the State University System admission requirements found in Florida Board of Governor's Regulation 6.002, *Admission of Undergraduate First-Time-in-College, Degree-Seeking Freshmen, available at* https://www.flbog.edu/wp-content/uploads/6_002FINAL_FTIC_03252020.pdf.

[8] Section 1009.531(6)(b)-(d), F.S. To ensure the required exam scores represent top student performance and are equivalent between the ACT and SAT, the department determines the score for FAS as no lower than 89th national percentile on the SAT, for FMS no lower than 75th national percentile on the SAT, and the required ACT score must be made concordant. The department must publish any changes to the exam requirements that apply to students graduating in the next 2 years.

[9] Section 1009.534, F.S.

[10] Section 1009.535, F.S.

[11] Sections 1009.535(1)(b)-(e), F.S.

[12] Section 1009.534(2), F.S. The 2021 GAA did not provide funds for a textbook stipend. Specific Appropriation 5, ch. 2021-36, L.O.F.

[13] Section 1009.535(2), F.S.

[14] *Id*. Beginning with the fall 2021 semester, a FMS who is enrolled in an associate degree program at a FCS institution is eligible for the award.

[15] Section 1009.532(3)(a), F.S.

For the 2020-2021 academic year, a total of $438,909,995 was disbursed to 67,369 students[16] receiving a FAS award and $212,251,523 to 51,818 students[17] receiving a FMS award.

Florida Gold Seal Vocational Scholarship

A Florida high school student who wishes to qualify for the Florida Gold Seal Vocational Scholarship (FGSV) award must meet the following initial eligibility requirements:

- Achieve a minimum 3.0 weighted GPA in the non-elective high school courses;
- Take at least three full credits in a single career and technical education program;
- Achieve a minimum 3.5 unweighted GPA in the career education courses;
- Complete 30 service hours; and[18]
- Achieve the required minimum score on the ACT, SAT, or Florida Postsecondary Education Readiness Test (P.E.R.T.) exams depicted in the table below:[19]

Exam Type	Sub-test	Required Score
ACT	Reading	19
	English	17
	Mathematics	19
SAT	Reading Test	24
	Writing and Language Test	25
	Math Test	24
P.E.R.T.	Reading	106
	Writing	103
	Mathematics	114

A FGSV award recipient is eligible for an award equal to the amount specified in the GAA.[20]

A student may receive a FGSV award for a maximum of 100 percent of the number of credit hours or equivalent clock hours required to complete an applied technology diploma, associate in applied science or associate in science degree, or a postsecondary career certificate program.[21]

For the 2020-2021 academic year, a total of $638,015 was disbursed to 755 students[22] receiving a FGSV award.

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[16] Florida Bright Futures Scholarship Program, *Florida Bright Futures Scholarship Disbursement History* (as of Sep. 2021), *available at* https://www.floridastudentfinancialaidsg.org/PDF/PSI/BFReportsD2.pdf.
[17] Florida Bright Futures Scholarship Program, *Florida Medallion Scholars Disbursement History* (as of Sep. 2021), *available at* https://www.floridastudentfinancialaidsg.org/PDF/PSI/BFReportsD3.pdf.
[18] Section 1009.532(1), F.S.; *See also* 2021-22 Bright Futures Student Handbook, *Chapter 1: Initial Eligibility Requirements* (Aug. 5, 2021), at 6, *available at* https://www.floridastudentfinancialaidsg.org/PDF/BFHandbookChapter1.pdf.
[19] *Id*.
[20] Section 1009.536(3), F.S.
[21] Section 1009.532(5)(a)1., F.S.; *See also* 2021-22 Bright Futures Student Handbook, *Chapter 2: What You Need to Know Now That You Are Eligible* (July 1, 2021), at 3, *available at* https://www.floridastudentfinancialaidsg.org/PDF/BFHandbookChapter2.pdf.
[22] Florida Bright Futures Scholarship Program, *Florida Gold Seal Vocational Scholars Disbursement History* (as of Sep. 2021), *available at* https://www.floridastudentfinancialaidsg.org/PDF/PSI/BFReportsD4.pdf.

Florida Gold Seal CAPE Scholarship

A Florida high school student who wishes to qualify for the Florida Gold Seal Career and Professional Education (FGSC) Scholarship must meet the following initial eligibility requirements:

- Earn a minimum of five postsecondary credit hours through CAPE industry certifications which articulate for college credit; and
- Complete 30 service hours.[23]

A FGSC award recipient is eligible for an award equal to the amount specified in the GAA.[24]

A student may receive an FGSC award for a maximum of 100 percent of the number of credit hours or equivalent clock hours required to complete an applied technology diploma, associate in applied science or associate in science degree, or a postsecondary career certificate program.[25] Upon completion of an eligible associate in science degree program which articulates to a baccalaureate degree, a FGSC scholar may also receive an award for a maximum of 60 credit hours toward the baccalaureate degree.[26]

For the 2020-2021 academic year, a total of $262,253 was disbursed to 286 students[27] receiving a FGSC award.

Student Volunteer Requirements for the Florida Bright Futures Scholarship Program

To be eligible for a scholarship award under the Bright Futures Program, a student must complete a specified number of hours of volunteer service work. A student must meet the following service hour requirements:

Bright Futures Scholarship Program	Required Service Hours[28]
FAS	100
FMS	75
FGSV	30
FGSC	30

The student's volunteer service work must be approved by the district school board, the administrators of a nonpublic school, or the DOE for home education students.[29]

Each district school board and the administrators of a nonpublic school must establish approved activities and the process for documentation of service hours, including the deadline by which

[23] Section 1009.536(2)(a)-(b), F.S.
[24] Section 1009.536(3), F.S.
[25] Section 1009.532(4)(b)1., F.S.; *See also* 2021-22 Bright Futures Student Handbook, *Chapter 2: What You Need to Know Now That You Are Eligible* (July 1, 2021), at 3, *available at* https://www.floridastudentfinancialaidsg.org/PDF/BFHandbookChapter2.pdf.
[26] Section 1009.536(5)(b)2., F.S.
[27] Florida Bright Futures Scholarship Program, *Florida Gold Seal CAPE Scholars Disbursement History* (as of Sep. 2021), *available at* https://www.floridastudentfinancialaidsg.org/PDF/PSI/BFReportsD5.pdf.
[28] Sections 1009.534(1), 1009.535(1), 1009.536(1)(e), and 1009.536(3)(b), F.S.
[29] *Id*.

the hours must be completed.[30] Service work may include, but is not limited to, a business or governmental internship, work for a nonprofit community service organization, or activities on behalf of a candidate for public office.[31] Except for credit earned through service-learning courses,[32] the student may not receive payment or academic credit for service work performed.[33]

The hours earned by a student must be documented in writing, signed by the student and the student's parent or guardian, and a representative of the organization where the work was performed.

In addition to the service hours, a student must identify a social or civic issue or a professional area that interests him or her, develop a plan for their personal involvement in addressing the issue or learning more about the area, and, through papers or presentations, evaluate and reflect upon his or her experience.[34]

III. Effect of Proposed Changes:

CS/SB 1060 modifies the eligibility requirements for the Bright Futures Scholarship Program to include an option for students to use paid work hours in lieu of volunteer hours to qualify for a scholarship. Specifically, the bill allows students, beginning with students graduating in the 2022-2023 academic year and thereafter, to meet volunteer service or paid work requirements through:[35]

- Florida Academic Scholars (FAS): 100 hours of volunteer service or 300 hours of paid work;
- Florida Medallion Scholars (FMS): 75 hours of volunteer service or at least 300 hours of paid work; and
- Florida Gold Seal Vocational Scholars (FGSV) and Florida Gold Seal CAPE Scholars (FGSC): 30 hours of volunteer service or at least 300 hours of paid work.

The paid work hours must meet the requirements for volunteer hours, including documentation in writing of paid work hours, and a student evaluation and reflection upon his or her volunteer service or paid work experience through papers or other presentations. The bill also makes it optional for a student to identify a social or civic issue or a professional area and develop a plan for personal involvement or learning about the area.

The takes effect on July 1, 2022.

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[30] 2021-22 Bright Futures Student Handbook, *Chapter 1: Initial Eligibility Requirements* (Aug. 5, 2021), at 4 and 6-7, *available at* https://www.floridastudentfinancialaidsg.org/PDF/BFHandbookChapter1.pdf.
[31] *Id*.
[32] Section 1003.497, F.S.
[33] 2021-22 Bright Futures Student Handbook, *Chapter 1: Initial Eligibility Requirements* (Aug. 5, 2021), at 4 and 6-7, *available at* https://www.floridastudentfinancialaidsg.org/PDF/BFHandbookChapter1.pdf.
[34] 2021-22 Bright Futures Student Handbook, *Chapter 1: Initial Eligibility Requirements* (Aug. 5, 2021), at 4 and 6-7, *available at* https://www.floridastudentfinancialaidsg.org/PDF/BFHandbookChapter1.pdf.
[35] The bill does not provide an option for students to qualify for the Bright Futures Scholarship Program using a combination of volunteer and paid hours.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private business could see an increase in the number of high school students applying for employment opportunities that qualify for the Bright Futures Scholarship program. Additionally, expanding the eligibility requirements could lead to more students qualifying for the Bright Futures Scholarship program, making college more affordable for students.

C. Government Sector Impact:

According to the Department of Education, the bill could lead to more students qualifying for a Bright Futures award due to expanding the pathways toward successfully completing the service hour requirement. The total number of additional students seeking to utilize the pathway of paid work to satisfy the initial eligibility requirement is indeterminable at this time.[36]

VI. Technical Deficiencies:

None.

[36] Florida Department of Education, *2022 Agency Bill Analysis for HB 461* (Dec. 6, 2021).

VII. Related Issues:

The bill does not address whether students may use past work hours to meet the requirements. Since the Bright Futures Scholarship program requires the student to submit a plan for volunteer hours, most school districts had a "pre-approval" type process for these hours. Accordingly, students who only had work hours, which do not currently count toward the requirement, likely would not have submitted a plan for approval and would be limited to those hours earned after July 1, 2022.[37]

VIII. Statutes Affected:

This bill substantially amends sections 1009.534, 1009.535, and 1009.536 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.)

Committee Substitute on February 8, 2022:

The committee substitute increases the number of paid work hours required for specified Bright Futures scholarships to equal the paid work hours required for the Florida Academic Scholars award, as follows:

- Florida Medallion Scholars (FMS): increases the 75 paid work hours in the bill to at least 300 hours; and
- Florida Gold Seal Vocational Scholars (FGSV) and Florida Gold Seal CAPE Scholars (FGSC): increases the 30 paid work hours in the bill to at least 300 hours.

B. Amendments:

None.

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

[37] *Id.*

By the Committee on Education; and Senator Hutson

581-02817-22 20221060c1

A bill to be entitled

An act relating to Florida Bright Futures Scholarship Program student service requirements; amending ss. 1009.534, 1009.535, and 1009.536, F.S.; providing that students may satisfy eligibility requirements for a Florida Academic Scholars, Florida Medallion Scholars, Florida Gold Seal Vocational Scholars, or a Florida Gold Seal CAPE Scholars award, respectively, by performing a specified number of hours of paid work; authorizing, instead of requiring, such students to identify a specified interest or develop a plan for their service requirements under the program; conforming provisions to changes by the act; providing an effective date.

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

Section 1. Subsection (1) of section 1009.534, Florida Statutes, is amended to read:

1009.534 Florida Academic Scholars award.—

(1) A student is eligible for a Florida Academic Scholars award if he or she meets the general eligibility requirements for the Florida Bright Futures Scholarship Program and:

(a) Has achieved a 3.5 weighted grade point average as calculated pursuant to s. 1009.531, or its equivalent, in high school courses ~~that are~~ designated by the State Board of Education as college-preparatory academic courses and has attained at least the score required under s. 1009.531(6)(a) on the combined verbal and quantitative parts of the Scholastic

581-02817-22 20221060c1

Aptitude Test, the Scholastic Assessment Test, or the recentered Scholastic Assessment Test of the College Entrance Examination, or an equivalent score on the ACT Assessment Program;

(b) Has attended a home education program according to s. 1002.41 during grades 11 and 12, has completed the International Baccalaureate curriculum but failed to earn the International Baccalaureate Diploma, or has completed the Advanced International Certificate of Education curriculum but failed to earn the Advanced International Certificate of Education Diploma, and has attained at least the score required under s. 1009.531(6)(a) on the combined verbal and quantitative parts of the Scholastic Aptitude Test, the Scholastic Assessment Test, or the recentered Scholastic Assessment Test of the College Entrance Examination, or an equivalent score on the ACT Assessment Program;

(c) Has been awarded an International Baccalaureate Diploma from the International Baccalaureate Office or an Advanced International Certificate of Education Diploma from the University of Cambridge International Examinations Office;

(d) Has been recognized by the merit or achievement programs of the National Merit Scholarship Corporation as a scholar or finalist; or

(e) Has been recognized by the National Hispanic Recognition Program as a scholar recipient.

The student must complete a program of volunteer service <u>or, beginning with a high school student graduating in the 2022-2023 academic year and thereafter, paid</u> work, as approved by the district school board, the administrators of a nonpublic school,

or the Department of Education for home education program students, which must include ~~a minimum of 75 hours of service work for high school students graduating in the 2010-2011 academic year and~~ 100 hours of volunteer service or 300 hours of paid work ~~for high school students graduating in the 2011-2012 academic year and thereafter~~. The student may ~~must~~ identify a social or civic issue or a professional area that interests him or her and~~,~~ develop a plan for his or her personal involvement in addressing the issue or learning about the area. The student must, ~~and,~~ through papers or other presentations, evaluate and reflect upon his or her volunteer service or paid work experience. ~~Except for credit earned through service-learning courses adopted pursuant to s. 1003.497, the student may not receive remuneration or academic credit for the volunteer service work performed.~~ Such volunteer service or paid work may include, but is not limited to, a business or governmental internship, work for a nonprofit community service organization, or activities on behalf of a candidate for public office. The hours of volunteer service or paid work must be documented in writing, and the document must be signed by the student, the student's parent or guardian, and a representative of the organization for which the student performed the volunteer service or paid work.

Section 2. Subsection (1) of section 1009.535, Florida Statutes, is amended to read:

1009.535 Florida Medallion Scholars award.—

(1) A student is eligible for a Florida Medallion Scholars award if he or she meets the general eligibility requirements for the Florida Bright Futures Scholarship Program and:

(a) Has achieved a weighted grade point average of 3.0 as calculated pursuant to s. 1009.531, or the equivalent, in high school courses that are designated by the State Board of Education as college-preparatory academic courses and has attained at least the score required under s. 1009.531(6)(b) on the combined verbal and quantitative parts of the Scholastic Aptitude Test, the Scholastic Assessment Test, or the recentered Scholastic Assessment Test of the College Entrance Examination, or an equivalent score on the ACT Assessment Program;

(b) Has completed the International Baccalaureate curriculum but failed to earn the International Baccalaureate Diploma or has completed the Advanced International Certificate of Education curriculum but failed to earn the Advanced International Certificate of Education Diploma, and has attained at least the score required under s. 1009.531(6)(b) on the combined verbal and quantitative parts of the Scholastic Aptitude Test, the Scholastic Assessment Test, or the recentered Scholastic Assessment Test of the College Entrance Examination, or an equivalent score on the ACT Assessment Program;

(c) Has attended a home education program according to s. 1002.41 during grades 11 and 12 and has attained at least the score required under s. 1009.531(6)(b) on the combined verbal and quantitative parts of the Scholastic Aptitude Test, the Scholastic Assessment Test, or the recentered Scholastic Assessment Test of the College Entrance Examination, or an equivalent score on the ACT Assessment Program;

(d) Has been recognized by the merit or achievement program of the National Merit Scholarship Corporation as a scholar or finalist but has not completed the program of volunteer service

or paid work required under s. 1009.534; or

(e) Has been recognized by the National Hispanic Recognition Program as a scholar, but has not completed the program of volunteer service or paid work required under s. 1009.534.

A high school student ~~graduating in the 2011-2012 academic year and thereafter~~ must complete at least 75 hours of volunteer service or, beginning with a high school student graduating in the 2022-2023 academic year and thereafter, at least 300 hours of paid work approved by the district school board, the administrators of a nonpublic school, or the Department of Education for home education program students. The student may ~~must~~ identify a social or civic issue or a professional area that interests him or her and~~,~~ develop a plan for his or her personal involvement in addressing the issue or learning about the area. The student must, ~~and,~~ through papers or other presentations, evaluate and reflect upon his or her volunteer service or paid work experience. ~~Except for credit earned through service learning courses adopted pursuant to s. 1003.497, the student may not receive remuneration or academic credit for volunteer service work performed.~~ Such volunteer service or paid work may include, but is not limited to, a business or governmental internship, work for a nonprofit community service organization, or activities on behalf of a candidate for public office. The hours of volunteer service or paid work must be documented in writing, and the document must be signed by the student, the student's parent or guardian, and a representative of the organization for which the student

performed the volunteer service or paid work.

Section 3. Paragraph (e) of subsection (1) and subsection (2) of section 1009.536, Florida Statutes, are amended to read:

1009.536 Florida Gold Seal Vocational Scholars and Florida Gold Seal CAPE Scholars awards.—The Florida Gold Seal Vocational Scholars award and the Florida Gold Seal CAPE Scholars award are created within the Florida Bright Futures Scholarship Program to recognize and reward academic achievement and career preparation by high school students who wish to continue their education.

(1) A student is eligible for a Florida Gold Seal Vocational Scholars award if he or she meets the general eligibility requirements for the Florida Bright Futures Scholarship Program and:

(e) ~~Beginning with high school students graduating in the 2011-2012 academic year and thereafter,~~ Completes at least 30 hours of volunteer service or, beginning with high school students graduating in the 2022-2023 academic year and thereafter, at least 300 hours of paid work approved by the district school board, the administrators of a nonpublic school, or the Department of Education for home education program students. The student may ~~must~~ identify a social or civic issue or a professional area that interests him or her and~~,~~ develop a plan for his or her personal involvement in addressing the issue or learning about the area. The student must, ~~and,~~ through papers or other presentations, evaluate and reflect upon his or her volunteer service or paid work experience. ~~Except for credit earned through service learning courses adopted pursuant to s. 1003.497, the student may not receive remuneration or academic credit for the volunteer service work performed.~~ Such volunteer

service or paid work may include, but is not limited to, a business or governmental internship, work for a nonprofit community service organization, or activities on behalf of a candidate for public office. The hours of volunteer service or paid work must be documented in writing, and the document must be signed by the student, the student's parent or guardian, and a representative of the organization for which the student performed the volunteer service or paid work.

(2) A ~~high school~~ student ~~graduating in the 2016-2017 academic year and thereafter~~ is eligible for a Florida Gold Seal CAPE Scholars award if he or she meets the general eligibility requirements for the Florida Bright Futures Scholarship Program, and the student:

(a) Earns a minimum of 5 postsecondary credit hours through CAPE industry certifications approved pursuant to s. 1008.44 which articulate for college credit; and

(b) Completes at least 30 hours of volunteer service or, beginning with a high school student graduating in the 2022-2023 academic year and thereafter, at least 300 hours of paid work, approved by the district school board, the administrators of a nonpublic school, or the Department of Education for home education program students. The student may ~~must~~ identify a social or civic issue or a professional area that interests him or her and~~,~~ develop a plan for his or her personal involvement in addressing the issue or learning about the area. The student must, ~~and,~~ through papers or other presentations, evaluate and reflect upon his or her experience. ~~Except for credit earned through service learning courses adopted pursuant to s. 1003.497, the student may not receive remuneration or academic credit for the volunteer service work performed.~~ Such volunteer service or paid work may include, but is not limited to, a business or governmental internship, work for a nonprofit community service organization, or activities on behalf of a candidate for public office. The hours of volunteer service or paid work must be documented in writing, and the document must be signed by the student, the student's parent or guardian, and a representative of the organization for which the student performed the volunteer service or paid work.

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

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 11, 2022

I respectfully request that **Senate Bill #1060**, relating to Florida Bright Futures Scholarship Program Student Service Requirements, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Travis Hutson
Florida Senate, District 7

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

2/28/22
Meeting Date

Approps
Committee

1060
Bill Number or Topic

Amendment Barcode (if applicable)

Name Alliance 4 Public Schools - Angie Gallo

Phone 407-718-9925

Address
Street

Email Angie@All4Public.org

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 Appropriations

BILL:	CS/SB 1210
INTRODUCER:	Environment and Natural Resources Committee and Senator Albritton
SUBJECT:	Pollution Control Standards and Liability
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Rogers	EN	**Fav/CS**
2.	Becker	Becker	AG	**Favorable**
3.	Reagan	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1210 amends section 403.182, Florida Statutes, regarding local pollution control programs. The bill provides that notwithstanding existing law or any existing local pollution control programs, the Secretary of the Department of Environmental Protection (DEP) has exclusive jurisdiction in setting standards or procedures for evaluating environmental conditions and assessing potential liability for the presence of contaminants on land that is classified as agricultural land pursuant to state law and being converted to a nonagricultural use. This exclusive jurisdiction includes defining what constitutes all appropriate inquiry required by federal law relating to the innocent landowners defense under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and associated guidance.

For land that is classified as agricultural land pursuant to state law and being converted to a nonagricultural use, the bill provides that the Secretary of the DEP may not delegate the authority to set standards or procedures for evaluating environmental conditions and assessing potential liability described in the bill to a county, a municipality, or another unit of local government through a local pollution control program. However, the bill does not preempt the enforcement authority of a county, a municipality, or another unit of local government through a local pollution control program.

The bill does not apply to former agricultural land for which a permit has been approved by a local government to initiate development or for which development was completed on or before July 1, 2022.

The bill may increase costs to the DEP for evaluating environmental conditions and assessing potential liability on agricultural land that is being converted to a nonagricultural use.

II. Present Situation:

Classification of Agricultural Lands

Section 193.461(1), F.S., requires state property appraisers to classify for ad valorem tax assessment purposes all lands within their counties as agricultural or nonagricultural.[1] Only lands that are used primarily for bona fide agricultural purposes may be classified agricultural.[2]

The term "bona fide agricultural purposes" means good faith commercial agricultural use of the land.[3] The term "agricultural purposes" includes, but is not limited to, horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, if the land is used principally for the production of tropical fish; aquaculture as defined in state law; algaculture; sod farming; and all forms of farm products as defined in state law; and farm production.[4]

In determining whether the use of the land for agricultural purposes is bona fide, the following factors may be taken into consideration:

- The length of time the land has been so used;
- Whether the use has been continuous;
- The purchase price paid;
- Size, as it relates to specific agricultural use, but a minimum acreage may not be required for agricultural assessment;
- Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforesting, and other accepted agricultural practices;
- Whether the land is under lease and, if so, the effective length, terms, and conditions of the lease; and
- Such other factors as may become applicable.[5]

In contrast, nonagricultural lands are lands that have either been diverted from an agricultural to a nonagricultural use, or are no longer being utilized for agricultural purposes.[6]

[1] Section 193.461(2), F.S.
[2] Section 193.461(3)(b), F.S.
[3] *Id.*
[4] Section 193.461(5), F.S.
[5] *Id.*
[6] Section 193.461(4), F.S.

Comprehensive Environmental Response, Compensation, and Liability Act

The CERCLA[7] is commonly known as the Superfund.[8] Thousands of contaminated sites exist nationally due to hazardous waste being dumped, left out in the open, or otherwise improperly managed.[9] These sites include manufacturing facilities, processing plants, landfills, and mining sites.[10]

The CERCLA created a tax on the chemical and petroleum industries and required that the money collected be used to clean up hazardous waste sites throughout the country.[11] The Superfund allows the U.S. Environmental Protection Agency (EPA) to clean up contaminated sites.[12] It also forces the parties responsible for the contamination to either perform cleanups or reimburse the government for EPA-led cleanup work.[13] When there is no viable responsible party, The Superfund gives the EPA the funds and authority to clean up contaminated sites.[14]

Federal agencies must comply with substantive and procedural CERCLA requirements to the same extent as private entities.[15] The following sequence of events generally applies to all sites, both privately and federally-owned or operated: preliminary assessment; site investigation; listing on the National Priorities List; remedial investigation; feasibility study; record of decision; remedial design; remedial action; long-term operation; and maintenance.[16] The remedy selected for cleanup at a federal facility must meet the CERCLA's cleanup standards.[17]

All Appropriate Inquiries

All appropriate inquiries (AAI)[18] is the process of evaluating a property's environmental conditions and assessing potential liability for any contamination.[19] AAI requirements apply to

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[7] 42 U.S.C. ss. 9601 et seq.
[8] EPA, *What is CERCLA?*, https://usepa.servicenowservices.com/ecss?id=kb_article_view&sys_kb_id=12ec93221bb99c1013bdb913cc4bcb32 (last visited Feb. 9, 2022).
[9] EPA, *What is Superfund?*, https://usepa.servicenowservices.com/ecss?id=kb_article_view&sys_kb_id=2e020af01b215410a5dced39bc4bcb98 (last visited Feb. 9, 2022).
[10] *Id.*
[11] EPA, *What is CERCLA?*, https://usepa.servicenowservices.com/ecss?id=kb_article_view&sys_kb_id=12ec93221bb99c1013bdb913cc4bcb32 (last visited Feb. 9, 2022).
[12] EPA, *What is Superfund?*, https://usepa.servicenowservices.com/ecss?id=kb_article_view&sys_kb_id=2e020af01b215410a5dced39bc4bcb98 (last visited Feb. 9, 2022).
[13] *Id.*
[14] *Id.*
[15] EPA, *Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Federal Facilities*, https://www.epa.gov/enforcement/comprehensive-environmental-response-compensation-and-liability-act-cercla-and-federal (last visited Feb. 9, 2022).
[16] *Id.*
[17] *Id.*
[18] *See* 40 C.F.R. pt. 312 (entitled "Innocent Landowners, Standards for Conducting All Appropriate Inquiries," also known as the "AAI Final Rule"); *see also* EPA, *Memorandum: Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA Bona Fide Prospective Purchasers, Contiguous Property Owners, or Innocent Landowners ("Common Elements")* (July 29, 2019), *available at* https://www.epa.gov/sites/default/files/2019-08/documents/common-elements-guide-mem-2019.pdf (last visited Feb. 9, 2022) (providing Common Elements guidance).
[19] EPA, *Lender Liability and Applicability of All Appropriate Inquiries, available at* https://www.epa.gov/sites/default/files/2017-07/documents/aai_factsheet_lender_liability_epa_560_f_17_192_508.pdf (last visited Feb. 9, 2022).

any party who can potentially claim protection from CERCLA liability as an innocent landowner, contiguous property owner, or bona fide prospective purchasers (BFPPs).[20]

Title 40, Part 312 of the Code of Federal Regulations (AAI Final Rule) provides that AAI investigations must be documented in a written report prepared by an environmental professional.[21] These reports often take the form of a Phase I Environmental Site Assessment.[22] A Phase I Environmental Site Assessment uses existing information to help understand the property conditions by examining current and historical uses of the site and potential threats to human health or the environment. When a potential owner conducts an AAI in compliance with Title 40, Part 312 of the Code of Federal Regulations, he or she may have a defense to liability if contamination is later discovered.[23]

A Phase II Environmental Site Assessment is recommended if the Phase I Environmental Site Assessment results reveal known or potential contamination on the property.[24] In that event, an environmental professional develops a sampling plan to evaluate the potential presence of contamination from hazardous substances and petroleum on the property and determines the sources and exposures.[25] If the contamination found at the property exceeds risk thresholds for the proposed reuse, a cleanup plan may be necessary.[26]

Local Pollution Control Programs

Section 403.182, F.S., provides that each county and municipality (or any combination thereof) may establish and administer a local pollution control program, so long as it complies with all other provisions of the Florida Air and Water Pollution Control Act (FAWPCA).[27] All local pollution control programs must:[28]

- Be approved by the DEP as adequate to meet the requirements of the FAWPCA and any applicable rules and regulations pursuant thereto;
- Provide by ordinance, regulation, or local law for requirements compatible with, or stricter or more extensive than those imposed by the FAWPCA and regulations issued thereunder;
- Provide for the enforcement of such requirements by appropriate administrative and judicial process; and
- Provide for administrative organization, staff, financial, and other resources necessary to effectively and efficiently carry out its program.

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[20] *Id.*
[21] EPA, *All Appropriate Inquiries Rule: Reporting Requirements and Suggestions on Report Content, available at* https://www.epa.gov/sites/default/files/2015-05/documents/aai_reporting_factsheet.pdf (last visited Feb. 9, 2022).
[22] *See* EPA, Assessing Brownfield Sites, available at https://www.epa.gov/sites/default/files/2020-07/documents/assessing_brownfield_sites.pdf (last visited Feb. 9, 2022) (explaining that performing a Phase I Environmental Site Assessment pursuant to ASTM International Standards E1527-13 prior to owning a property is often equivalent to conducting all appropriate inquiries).
[23] *Id*.
[24] *Id*.
[25] *Id.*
[26] *Id*.
[27] Section 403.182, F.S.; *see also* ch. 67-436, s. 2, Laws of Fla. (identifying the short title of the act).
[28] Section 403.182(1), F.S.

If the DEP determines that a local pollution control program is inadequate to prevent and control pollution, or is being administered in a manner inconsistent with the requirements of the FAWPCA, it may require necessary corrective measures.[29] If these corrective measures are not implemented, the DEP may reassume implementation of the FAWPCA within the jurisdiction.[30] Each local pollution control program must cooperate with and assist the DEP in carrying out its powers, duties, and functions.[31]

Site Assessment Guidance for Former Agricultural Sites in Miami-Dade County

The Miami-Dade County (County) Division of Environmental Resources Management (DERM) implements monitoring, education, restoration, regulatory, and land management programs to protect water quality, drinking water supply, air quality and natural resources that are vital to the health and well-being of all County residents and visitors and the ecosystem.[32]

In August 2021, the DERM issued a revised *Site Assessment Guidance for Former Agricultural Sites in Miami-Dade County, DERM Guidance 7G* (DERM Guidance).[33] The DERM Guidance revised earlier interim guidance on the same topic.[34] The DERM states that the guidance was developed in response to requests to provide environmental professionals and practitioners clear guidance for evaluating potential environmental concerns at sites transitioning from a former bona fide agriculture land use (e.g. crops and orchards) to a nonagricultural land use, such as residential use.[35]

According to the DERM Guidance, the conversion of former agricultural lands into nonagricultural uses like residences and schools results in different exposed populations (e.g. expectant mothers, children, and construction workers), different exposure scenarios (e.g. increased exposure frequency and duration), and different exposure pathways.[36] Under these new scenarios, residual agrichemical concentrations in the environment may pose an unacceptable health risk to exposed populations and have the potential to cause a nuisance, ground pollution, or water pollution as defined in the Miami-Dade County Code.[37]

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[29] *See* s. 403.182(4), F.S.
[30] *See id.*
[31] Section 403.182(10), F.S.
[32] DERM, *Environment*, https://www.miamidade.gov/environment/ (last visited Feb. 9, 2022).
[33] DERM, *Site Assessment Guidance for Former Agricultural Sites in Miami-Dade County, DERM Guidance 7G, available at* https://www.miamidade.gov/resources/legal-ads/2021-08-interim-guidance-assessment-at-former-agricultural-sites.pdf (last visited Feb. 9, 2022).
[34] DERM, *Interim Site Assessment Guidance for Developing at Former Agricultural Sites*, https://www.miamidade.gov/environment/research-reports.asp#0 (last visited Feb. 9, 2022). The Dade County Farm Bureau opposed the interim guidance, asserting (among other things) that it unfairly targeted agricultural lands, assumed without evidence that they are polluted, and imposed on them heavy-handed environmental testing protocols. *See Landowners Urged to Fight Back against Miami-Dade County DERM*, SOUTH DADE NEWSLEADER, Nov. 13, 2020, http://www.southdadenewsleader.com/news/landowners-urged-to-fight-back-against-miami-dade-county-derm/article_bac6b9f8-253c-11eb-915f-cf89a59e3111.html (last visited Feb. 9, 2022).
[35] *Id.*
[36] DERM, *Site Assessment Guidance for Former Agricultural Sites in Miami-Dade County, DERM Guidance 7G, available at* https://www.miamidade.gov/resources/legal-ads/2021-08-interim-guidance-assessment-at-former-agricultural-sites.pdf (last visited Feb. 9, 2022).
[37] *Id.* at 1.

To address these concerns, the DERM Guidance requires "testing/proper assessment and, if necessary, risk mitigation to ensure the protection of public health, safety, and welfare."[38] It addresses areas historically utilized for growing agricultural crops and provides minimum requirements to characterize the site's environmental conditions resulting from agricultural activities at the site. The DERM notes that based upon changes in types of crops grown, agrichemicals used, irrigation, and pest management strategies, homogenous application of agrichemicals and distribution of agrichemical residues in soils and groundwater cannot be assumed. Ancillary use areas such as agrichemical storage, mix-load areas, and fuel shortage areas may require more targeted assessment and may include additional contaminants of concern (COCs). And additional assessment may be necessary on a case-by-case basis for properties at which a nonagricultural land use predated the bona fide agricultural use (such as landfills and military installations) or where the land use history indicates a period during which bona fide agricultural use was interrupted by a nonagricultural use.[39]

The DERM Guidance provides guidance on soil assessment issues like sampling methodologies (including discrete sampling, composite sampling, and Incremental Sampling Methodology (ISM) sampling); sampling intervals; COCs; Synthetic Precipitation Leaching Procedure (SPLP) analysis; acute toxicity considerations; assessment of bioavailability from soil; and background concentrations.[40] It also provides guidance on groundwater assessment issues like sampling frequency and COCs, the substance of technical reports that property owners submit to the DERM, and notifications.[41]

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 403.182, F.S., regarding local pollution control programs. The bill provides that notwithstanding existing law or any existing local pollution control programs, the Secretary of the DEP has exclusive jurisdiction in setting standards or procedures for evaluating environmental conditions and assessing potential liability for the presence of contaminants on land that is classified as agricultural land pursuant to state law and being converted to a nonagricultural use. This exclusive jurisdiction includes defining what constitutes all appropriate inquiry required by federal law relating to innocent landowners defense under the CERCLA and associated guidance.

For land that is classified as agricultural land pursuant to state law and being converted to a nonagricultural use, the bill provides that the Secretary of the DEP may not delegate the authority to set standards or procedures for evaluating environmental conditions and assessing potential liability described in the bill to a county, a municipality, or another unit of local government through a local pollution control program. However, the bill also provides that it does not preempt the enforcement authority of a county, a municipality, or another unit of local government through a local pollution control program.

[38] *Id.*
[39] *Id.*
[40] *Id.* at 2-6.
[41] *Id.* at 6-8.

The bill does not apply to former agricultural land for which a permit has been approved by a local government to initiate development or for which development was completed on or before July 1, 2022.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may increase costs to the DEP because it is assuming exclusive jurisdiction in setting standards or procedures for evaluating environmental conditions and assessing potential liability for the presence of contaminants on land that is classified as agricultural land pursuant to state law and being converted to a nonagricultural use. In contrast, local governments may experience a decrease in costs associated with setting such standards or procedures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 403.182 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 Environment and Natural Resources on February 7, 2022:
The committee substitute:

- Narrows the scope of the underlying bill to the following:
  - Provides that the Secretary of the Department of Environmental Protection has exclusive jurisdiction from "all matters related to" (in the underlying bill) evaluating environmental conditions and assessing potential liability for the presence of contaminants, to "setting standards or procedures" for same.
  - Modifies the scope of the evaluation and assessment, from land that is or was classified as agricultural land, to land that is classified as agricultural land and is being converted to a nonagricultural use.
  - Clarifies that the secretary's exclusive jurisdiction includes defining what constitutes all appropriate inquiry consistent with federal law and guidance.
  - Clarifies that the secretary may not delegate this authority to set standards or procedures to a county, a municipality, or another unit of local government through a local pollution control program for land that is classified as agricultural under state law and being converted to nonagricultural use.
  - Provides that the bill does not preempt the enforcement authority of a county, a municipality, or another unit of local government through a local pollution control program.
  - Provides that the bill does not apply to former agricultural land for which a permit has been approved by a local government to initiate development or for which development was completed on or before July 1, 2022.

B. Amendments:

None.

By the Committee on Environment and Natural Resources; and Senator Albritton

592-02786-22 20221210c1

A bill to be entitled

An act relating to pollution control standards and liability; amending s. 403.182, F.S.; providing that the Secretary of Environmental Protection has exclusive jurisdiction in setting standards or procedures for evaluating environmental conditions and assessing potential liability for the presence of contaminants on certain agricultural lands; prohibiting the secretary from delegating such authority to a local governmental entity; providing construction and applicability; providing an effective date.

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

Section 1. Subsection (11) is added to section 403.182, Florida Statutes, to read:

403.182 Local pollution control programs.—

(11)(a) Notwithstanding this section or any existing local pollution control programs, the Secretary of Environmental Protection has exclusive jurisdiction in setting standards or procedures for evaluating environmental conditions and assessing potential liability for the presence of contaminants on land that is classified as agricultural land pursuant to s. 193.461 and being converted to a nonagricultural use. The exclusive jurisdiction includes defining what constitutes all appropriate inquiry consistent with 40 C.F.R. part 312 and guidance thereunder.

(b) The secretary may not delegate the authority to set

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

592-02786-22 20221210c1

standards or procedures for evaluating environmental conditions and assessing potential liability under paragraph (a) to a county, a municipality, or another unit of local government through a local pollution control program under this section. This subsection does not preempt the enforcement authority of a county, a municipality, or another unit of local government through a local pollution control program under this section.

(c) This subsection does not apply to former agricultural land for which a permit has been approved by a local government to initiate development or for which development was completed on or before 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 Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 15, 2022

I respectfully request that **Senate Bill #1210**, relating to Pollution Control Standards and Liability, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Ben Albritton
Florida Senate, District 26

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

2/28/22
Meeting Date

Appropriations
Committee

1210
Bill Number or Topic

Amendment Barcode (if applicable)

Name Adam Basford

Phone 850-224-7173

Address 516 N Adams
Street

Email abasford@aif.com

Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Associated Industries of Florida

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/28/22
Meeting Date

approp.
Committee

1210
Bill Number or Topic

Amendment Barcode (if applicable)

Name Lindsay Cross

Phone

Address 1700 N monroe
Street

Email lindsay@fcvoters.org

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:
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

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 Appropriations

BILL:	SB 1358
INTRODUCER:	Senator Rouson
SUBJECT:	Task Force on the Monitoring of Children in Out-of-Home Care
DATE:	February 25, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Cox	CF	**Favorable**
2.	Kolich	Harkness	ACJ	**Recommend: Favorable**
3.	Kolich	Sadberry	AP	**Favorable**

I. Summary:

SB 1358 creates the Task Force on the Monitoring of Children in Out-of-Home Care adjunct to the Florida Department of Law Enforcement (FDLE), with the FDLE providing administrative support for the Task Force. The Task Force is required to identify and counter the root causes of why children go missing while in out-of-home care and to ensure that prompt and effective action is taken to address such causes. The Task Force must examine and recommend improvements to current policies, procedures, programs, and initiatives to prevent children from going missing while in out-of-home care and to ensure that timely and comprehensive steps are taken to find children who are missing for any reason, including, but not limited to, running away, human trafficking, and abduction by or absconding with a parent or an individual who does not have care or custody of the child.

The Task Force is to be composed of 13 members, including, but not limited to, a member of the Senate, a member of the House of Representatives, and representatives from the FDLE, the Guardian ad Litem program, and the community-based care lead agencies (CBCs), a licensed foster parent, and a young adult who has aged out of the foster care system. Dates are specified for member appointments and the initial meeting of the Task Force.

The bill requires the Department of Children and Families (DCF or department) to submit monthly reports through October, 2023, to assist the Task Force in fulfilling its duties and requires the Florida Institute for Child Welfare to conduct focus groups with children in out-of-home care and young adults who have aged out of the foster care system to examine why children leave their out-of-home placements and how to prevent them from leaving.

The bill requires the Task Force to submit a report with findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2023.

The bill includes a date for repeal of the section creating the Task Force on June 30, 2024, unless reviewed and saved from repeal by the Legislature.

The bill is anticipated to have a significant negative fiscal impact on the FDLE. See Section V. Fiscal Impact Statement.

The bill has an effective date of July 1, 2022.

II. Present Situation:

Out-of-home Care

Current law requires any person who knows or suspects that a child has been abused, abandoned, or neglected to report such knowledge or suspicion to the Florida central abuse hotline (hotline).[1] A child protective investigation begins if the hotline determines the allegations meet the statutory definition of abuse,[2] abandonment,[3] or neglect.[4] A child protective investigator (CPI) investigates the situation either immediately, or within 24 hours after the report is received, depending on the nature of the allegation.[5]

After conducting an investigation, if the CPI determines that the child is in need of protection and supervision that necessitates removal, the investigator may initiate formal proceedings to remove the child from his or her home. When the DCF removes a child from the home, known as out-of-home care, a series of dependency court proceedings must occur before a child may be adjudicated dependent.[6]

When children cannot safely remain at home with parents, Florida's child welfare system finds safe out-of-home placements for such children. After an assessment to determine the most

[1] Section 39.201(1), F.S.
[2] Section 39.01(2), F.S. The term "abuse" means any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan towards successful reunification or met the conditions for return of the children into the home. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.
[3] Section 39.01(1), F.S. The term "abandoned" or "abandonment" means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both.
[4] Sections 39.01(50) and 39.201(2)(a), F.S. "Neglect" occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering necessary services.
[5] Section 39.101(2), F.S.
[6] *See* s. 39.01(14), F.S., for the definition of "child who is found to be dependent".

appropriate out-of-home placement, a child may be placed with a relative, fictive kin, licensed foster parent, in a group home or residential setting.[7] While in out-of-home care, the child and his or her parents receive services to address problems that led to the removal so that reunification or other permanency option may be reached as quickly as possible.[8]

Once removed, the shelter and daily care for the child are provided by foster or kinship families or group home staff. These caregivers undergo an assessment and licensing or certification process to ensure their suitability as caregivers. While in out-of-home care, services are provided to the child and his or her parents to help improve the problems that led to the removal so that reunification or other permanency options may be reached as quickly as possible.[9]

Missing Children in DCF Custody

When Rilya Wilson disappeared in 2002, national awareness of the problem of children becoming missing while under the care of child welfare agencies intensified.[10] In the wake of her disappearance, at the direction of Governor Jeb Bush, DCF and the Florida Department of Law Enforcement (FDLE) teamed up to locate 393 missing children who were under the DCF's custody.[11] The multi-agency, statewide effort was entitled "Operation SafeKids" (Operation). Seven Regional Child Location Strike Forces were created in each of the FDLE's seven regions. The results of the Operation included:

- 292 (75%) children were located or cases were closed.
- 13 (3%) children aged out of care and were no longer under the custody of the DCF but still had active cases with law enforcement.
- 88 (22%) children were not located and remained under active investigation by the local law enforcement agency and the DCF. Of these, 20 were included in the Endangered/Parental Abduction/Involuntary group, and 68 were included in the Runaway group.[12]

The FDLE reports that the FDLE's Missing Endangered Persons Information Clearinghouse (MEPIC)[13] led a multi-agency, statewide effort, titled "Operation Safe Kids." Part of this

[7] Rule 65C-28.004, F.A.C.
[8] Child Welfare Information Gateway, *Out-of- Home Care Overview*, available at https://www.childwelfare.gov/topics/outofhome/overview/#:~:text=Out%2Dof%2Dhome%20care%20is,to%20abuse%20and%2For%20neglect (last visited Jan. 22, 2022).
[9] *Id*.
[10] Four-year old Rilya Wilson went missing while in DCF's custody after the termination of her mother's parental rights. The DCF did not discover her disappearance until two years later, when Rilya was not found living at the home of her caregiver. The Florida Legislature passed, and the Governor signed, a bill into law that created the Rilya Wilson Act. Section 39.604, F.S., requires a child from birth to the age of school entry, who is under court-ordered protective supervision or in out-of-home care and is enrolled in an early education or child care program, to attend the program 5 days a week unless the court grants an exemption.
[11] The FDLE and the DCF, *Operation SafeKids, Results, Findings & Recommendations* (Dec. 17, 2002), available at https://popcenter.asu.edu/sites/default/files/problems/runaways/PDFs/FL%20DOC&F_2002.pdf (last visited January 22, 2022).
[12] *Id*.
[13] The Missing Endangered Persons Information Clearinghouse (MEPIC) is the central repository of information regarding missing endangered persons in Florida. MEPIC assists law enforcement agencies and Florida's citizens in finding missing persons by providing analytical services and engaging the public in the search. As part of these services, MEPIC has worked with partner agencies to develop the Florida AMBER Plan and Florida Silver Alert Plan. Under these plans, MEPIC is responsible for issuing all AMBER Alerts, Missing Child Alerts and State Silver Alerts in Florida, *available at*: https://www.fdle.state.fl.us/mcicsearch/ (Last visited January 11, 2022).

operation's work was implementation of the now standard procedure, opening missing persons cases for every child discovered missing while under the DCF custody. The DCF, as the custodian of the missing child, makes the initial missing report to the appropriate local law enforcement agency who then enters the case into the Florida Crime Information Center (FCIC). This entry ensures all law enforcement and criminal justice professionals nationwide making inquiries regarding a possible missing child similar to the subject of the case, are notified of the Florida missing child. Additionally, the DCF creates a record in the Florida Safe Families Network (FSFN), their internal database, concerning the missing episode.[14]

A DCF liaison, co-located within MEPIC, quality controls the information in FSFN using internal DCF information and the missing child's FCIC entry. This information is electronically transferred from the DCF liaison to members of MEPIC who facilitate its entry into MEPIC's Missing Persons Database (MPDB). In addition to populating a variety of Florida systems and access points to the information, MPDB also electronically transfers the information regarding the child to the National Center for Missing and Exploited Children (NCMEC). When fully implemented as an electronic network in February of 2008, this relay process became the first of its kind in the nation, rapidly transferring the missing record of a child in state care, to both state and federal missing persons clearinghouses to help optimize the safe recovery of the child in minimal time.[15]

The co-location and partnership with the DCF personnel within MEPIC facilitates the ongoing effectiveness and continued success of this system as well as the facilitation of near immediate agency-to-agency communication and information sharing between state and local partners on all DCF missing child cases. This benefit is particularly valuable with those cases involving the most serious danger for the children and urgency required to insure a safe recovery.[16]

Additionally, a Florida Senate interim project report noted that the disappearance of Rilya Wilson in 2002 raised national awareness of the problem of children who become missing while under the care of the child welfare agencies charged with protecting them. Since then, Florida and many other states studied the issue and enacted legislation and implemented policies intended to improve tracking of children in state care. The report made a number of recommendations related to changes in Florida law, including:

- The DCF should be given rule-making authority specific to missing children. The department should be directed to promulgate rules that will provide comprehensive, explicit and consistent guidelines to be followed by its employees and contracted providers.
- The Legislature should consider amending Chapter 39 to require the department and its contracted providers to report a child as missing to the appropriate law enforcement agency, after making reasonable, but unsuccessful, efforts to locate the child and determining that it is necessary to report the child as missing.
- Section 937.021(1), F.S., should be amended to make it clear that a law enforcement agency must take reports of missing children not only from parents and guardians, but also from the department or its contracted providers.

[14] The FDLE, *2022 FDLE Legislative Bill Analysis SB 1358*, p. 5, January 19, 2022. (on file with the Senate Committee on Children, Families and Elder Affairs) (hereinafter cited as "The FDLE SB 1358 Analysis").
[15] *Id*.
[16] *Id*.

- Section 787.04(3), F.S., related to removing a child during an investigation or while under protective supervision, should be amended to require that a defendant act knowingly and willfully, rather than with criminal intent, after receiving constructive or actual notice of the pending matter.[17]

All of these recommendations were enacted during the 2008 legislative session.[18]

Collection of Information Related to Children in Out-of-home Care

Federal legislation enacted in 1993 supports states in planning, designing, developing, and implementing a Statewide Automated Child Welfare Information System (SACWIS) system. SACWIS is a comprehensive, automated case management system that helps social workers manage foster care and adoption cases. All states and the District of Columbia collect data on their child welfare cases and activities for entry into a statewide automated system that provides reports for a variety of uses.[19]

The Children's Bureau requires states to include 66 data elements, including demographic information on the child's race, age, gender, and date of entry into care. The SACWIS includes case-related information, such as the reason identified for removing the child and placing him or her into foster care, service goals, number of placements, and availability for adoption. States may include other data elements to meet their needs, including elements that help caseworkers manage their caseloads within the structure of the child welfare system. States use their SACWIS data to create management and outcome reports.[20]

The DCF's Florida Safe Families Network (FSFN) is the state's SACWIS.[21] FSFN serves as the statewide electronic case record for all child abuse investigations and case management activities in Florida. The amount of data entered into FSFN is extensive and if fully utilized can provide infinite details on the whereabouts and safety of children in out-of-home care.

Florida Institute for Child Welfare

In 2014, the Legislature established the Florida Institute for Child Welfare (FICW) at the Florida State University, College of Social Work. The Legislature created the FICW to provide research and evaluation that contributes to a more sustainable, accountable, and effective child welfare system. The purpose of the FICW is to advance the well-being of children and families by improving the performance of child protection and child welfare services through research,

[17] The Florida Senate, Committee on Children, Families, and Elder Affairs, *Missing Children*, Interim Project Report 2008-106, October 2007, available at https://www.flsenate.gov/UserContent/Committees/Publications/InterimWorkProgram/2008/pdf/2008-106cf.pdf (last visited January 22, 2022).
[18] Chapter 2008-245, L.O.F.
[19] Substance Abuse and Mental Health Services Administration Center for Substance Abuse Treatment and Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, *Introduction to Cross-System Data Sources in Child Welfare, Alcohol and Other Drug Services, and Courts*, HHS Publication No. SMA-11-4630, 2011, available at https://ncsacw.samhsa.gov/files/DataPrimer_508.pdf (last visited January 22, 2022).
[20] *Id*.
[21] Rule 65C-38.001, F.A.C.

policy analysis, evaluation, and leadership development.[22] Current law requires the FICW to establish an affiliate network of public and private universities with accredited degrees in social work. All public universities with such programs in Florida are currently part of the network. In 2017, the FICW expanded its affiliate network to include research affiliates, and there are now over 50 research faculty affiliates. The FICW is statutorily mandated to:

- Maintain a program of research contributing to the scientific knowledge related to child safety, permanency, and child and family well-being.
- Advise the DCF and other organizations about scientific evidence regarding child welfare practice, as well as management practices and administrative processes.
- Assess performance of child welfare services based on specified outcome measures.
- Evaluate training requirements for the child welfare workforce and the effectiveness of training.
- Develop a program of training and consulting to assist organizations with employee retention.
- Identify and communicate effective policies and promising practices.
- Recommend improvements in the state's child welfare system.
- Submit annual reports to the Governor and Legislature.[23]

The FICW sponsors and supports interdisciplinary research projects and program evaluation initiatives that contribute to knowledge relevant to enhancing Florida's child welfare outcomes.

Task Force

Section 20.03, F.S., includes definitions related to organizational structure. In part, it defines a "task force" as an advisory body created without specific statutory enactment for a time not to exceed one year or created by specific statutory enactment for a time not to exceed three 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.[24]

Florida has established a number of task forces in the past related to child welfare. These have typically been created either by the Governor or the DCF's Secretary in response to a tragic incident involving a child under the DCF's custody. Examples of these include, in part:

- The Nubia Report, the Investigative Panel's Findings and Recommendations, 2011.[25]
- Family Safety Quality Assurance Review of Courtney Alisa Clark, Initial Findings, 2007.[26]
- Report of Gabriel Myers Work Group on Child-on-Child Sexual Abuse, 2010.[27]
- Governor's Blue Ribbon Panel on Child Protection, 2003 (Rilya Wilson).[28]

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[22] Section 1004.615, F.S.
[23] *Id*.
[24] Section 20.30(8). F.S.
[25] Lawrence, D., Martinez, R., and Sewell, J., *The Nubia Report, The Investigative Panel's Findings and Recommendations*, available at http://centerforchildwelfare.org/kb/bppub/NubiasStory.pdf (last visited Jan. 20, 2022).
[26] The DCF, *Family Safety Quality Assurance Review of Courtney Alisa Clark, Initial Findings*, available at http://centerforchildwelfare.org/kb/FlPerformance/cclark%20QA%20Initial%20Findings.pdf (last visited Jan. 20, 2022).
[27] The DCF, *Report of Gabriel Myers Work Group on Child-on-Child Sexual Abuse*, available at https://www.myflfamilies.com/initiatives/GMWorkgroup/docs/Gabriel%20Myers%20COC%20Report%20May%2014%202010.pdf (last visited Jan. 20, 2022).
[28] The DCF, *Governor's Blue Ribbon Panel on Child Protection*, available at http://centerforchildwelfare.org/kb/FlPerformance/BlueRibbonFinal110703.pdf (last visited Jan. 20, 2022).

There is currently no task force that monitors children in out-of-home care.

III. Effect of Proposed Changes:

The bill creates the Task Force on the Monitoring of Children in Out-of-Home Care within the FDLE. The Task Force is created to identify and counter the root causes of why children go missing while in out-of-home care and to ensure prompt and effective action is taken to address such causes. The bill requires the Task Force to examine and recommend improvements to current policies, procedures, programs, and initiatives to prevent children from going missing while in out-of-home care and to ensure that timely and comprehensive steps are taken to find children who are missing for any reason, including, but not limited to, running away, human trafficking, and abduction by a parent or a person who does not have care or custody of the child.

The Task Force must be composed of the following 13 members:

- A member of the Senate, appointed by the President of the Senate.
- A member of the House of Representatives, appointed by the Speaker of the House of Representatives.
- The Secretary of the DCF, or designee.
- The Secretary of the Department of Juvenile Justice, or designee.
- The executive director of the Statewide Guardian ad Litem Office, or designee.
- The executive director of the FDLE, or designee.
- A representative from Safe Kids Florida, appointed by the State Surgeon General.
- A representative from the Statewide Council on Human Trafficking, appointed by the Attorney General.
- A representative from a CBC that delivers child welfare services in a rural county, appointed by the DCF's Secretary.
- A representative from a CBC that delivers child welfare services in an urban county, appointed by DCF's Secretary.
- A licensed foster parent, appointed by the DCF's Secretary.
- A representative from a residential group care provider, appointed by the DCF's Secretary.
- A young adult who aged out of the foster care system, appointed by the DCF's Secretary.

The bill requires all Task Force appointments to be made by August 1, 2022, and provides that each member serves at the pleasure of the appointing official. A vacancy on the Task Force must be filled in the same manner as the original appointment. The members must elect a chair from among the members.

The bill requires the Task Force to convene no later than September 1, 2022, and to meet monthly thereafter or upon the call of the chair. The bill allows meetings to be held through teleconference or other electronic means.

The bill requires the Task Force to:

- Analyze statistical data regarding children in out-of-home care who are missing and the reasons why, if known;

- Identify the root causes of why children go missing while in out-of-home care and how to prevent children from going missing while in out-of-home care;
- Assess the relationship between children who go missing from out-of-home care and the risks of such children becoming victims of human trafficking;
- Assess the comprehensiveness and effectiveness of existing policies and procedures for preventing children in out-of-home care from going missing, for promptly determining whether such children are missing, and for locating such children;
- Evaluate the state's approaches to reporting on the individual status of children missing from out-of-home care and the results of the efforts to locate such children, including, but not limited to, the use of technology, training, communication, and cooperation;
- Measure the overall performance of efforts to locate and recover children missing from out-of-home care, including, but not limited to, the communication and response between CBC's, the DCF, and other entities;
- Collaborate with the FICW to identify best practices used in other states for monitoring the location of children in out-of-home care who go missing, and evaluate whether such practices should be adopted in the state; and
- Submit recommendations to improve policies, procedures, and systems in the state, including, but not limited to, technology, training, communication, and cooperation, so all entities are effectively monitoring children in out-of-home care, responding appropriately when such children go missing, and preventing such children from going missing while in out-of-home care.

The bill requires the FICW to conduct focus groups with children in out-of-home care and young adults who aged out of the foster care system to assist the Task Force in fulfilling its duties. The focus groups must, at a minimum, consider the reasons why such children seek to leave their out-of-home placement, identify opportunities and resources to assist and prevent children from leaving their placements, and to facilitate the return of such missing children. The bill requires the FICW to submit the findings from the focus groups to the Task Force by April 1, 2023.

The bill requires the DCF to provide monthly reports to the Task Force until October 1, 2023. The monthly reports must, at a minimum, address the number and percentage of children in out-of-home care who have been reported missing, the reasons why such children are missing, if known, and the length of time between when such children are reported missing and their recovery or return. The monthly reports must categorize the required data by age, county, CBC, and reason, if known.

The Task Force must submit a report with its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2023.

The bill includes a repeal date of June 30, 2024, for the section creating the Task Force, unless reviewed and saved from repeal by the Legislature.

The bill provides an effective date of July 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 Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FDLE reports that due to the short-term nature of the Task Force, the FDLE states it will require two OPS positions totaling $140,076 ($130,986 recurring) to support the Task Force.[29]

VI. Technical Deficiencies:

None.

[29] The FDLE, *Agency Analysis for SB 1358*, p. 4, January 19, 2022 (on file with Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "The FDLE SB 1358 Analysis).

VII. Related Issues:

The FDLE has reported that as a task force pursuant to s. 20.03, F.S., this body would be required to meet sunshine meeting and records requirements. The bill does not provide an exception for closed sessions, therefore, task force members would not be able to openly discuss confidential and/or exempt records without waiving such rights. Further, the FDLE states that there may be the need to occasionally possess and review law enforcement sensitive information in this setting.[30] The FDLE respectfully recommends mirroring language found in s. 943.687(8), FS, which provides: "Any portion of a meeting of the Marjory Stoneman Douglas High School Public Safety Commission at which exempt or confidential and exempt information is discussed is exempt from s. 286.011, FS, and s. 24(b), Art. I of the State Constitution.[31]

Additionally, the FDLE requests that additional language be included in the bill to allow for the Task Force to possess records while maintaining any exemption or confidentiality status those records may have already maintained and language authorizing closed sessions to discuss confidential and/or exempt materials that the Task Force may regularly need, such as active criminal intelligence information or active criminal investigative information, or personal identifiable information of individuals such as victims who may have constitutional rights under Marsy's Law.[32]

VIII. Statutes Affected:

The bill creates section 39.4093 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.

[30] The FDLE SB 1358 Analysis, p. 5.
[31] *Id*.
[32] *Id*.

By Senator Rouson

19-01584-22 20221358__

A bill to be entitled

An act relating to the Task Force on the Monitoring of Children in Out-of-Home Care; creating s. 39.4093, F.S.; creating the task force adjunct to the Department of Law Enforcement; requiring the department to provide certain services; specifying the purpose of the task force; specifying the composition of the task force; providing requirements for member appointments, election of a chair, and meetings; specifying duties of the task force; requiring the Florida Institute for Child Welfare to conduct certain focus groups and submit its findings to the task force by a specified date; requiring the Department of Children and Families to submit certain monthly reports to the task force through a specified date; requiring the task force to submit a report to the Governor and Legislature by a specified date; providing for future repeal; providing an effective date.

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

Section 1. Section 39.4093, Florida Statutes, is created to read:

39.4093 Task Force on the Monitoring of Children in Out-of-Home Care.—

(1) CREATION.—The Task Force on the Monitoring of Children in Out-of-Home Care, a task force as defined in s. 20.03(8), is created adjunct to the Department of Law Enforcement. The

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

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Department of Law Enforcement shall provide administrative and staff support services relating to the functions of the task force.

(2) PURPOSE.—The purpose of the task force is to identify and counter the root causes of why children go missing while in out-of-home care and to ensure that prompt and effective action is taken to address such causes. The task force shall examine and recommend improvements to current policies, procedures, programs, and initiatives to prevent children from going missing while in out-of-home care and to ensure that timely and comprehensive steps are taken to find children who are missing for any reason, including, but not limited to, running away, human trafficking, and abduction by or absconding with a parent or an individual who does not have care or custody of the child.

(3) MEMBERSHIP; MEETINGS.—

(a) The task force is composed of the following members:

1. A member of the Senate, appointed by the President of the Senate.

2. A member of the House of Representatives, appointed by the Speaker of the House of Representatives.

3. The secretary, or his or her designee.

4. The Secretary of Juvenile Justice, or his or her designee.

5. The executive director of the Statewide Guardian Ad Litem Office, or his or her designee.

6. The executive director of the Department of Law Enforcement, or his or her designee.

7. A representative from Safe Kids Florida, appointed by the State Surgeon General.

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

8. A representative from the Statewide Council on Human Trafficking, appointed by the Attorney General.

9. A representative from a community-based care lead agency that delivers child welfare services in a rural county, appointed by the secretary.

10. A representative from a community-based care lead agency that delivers child welfare services in an urban county, appointed by the secretary.

11. A licensed foster parent, appointed by the secretary.

12. A representative from a residential group care provider, appointed by the secretary.

13. A young adult who aged out of the foster care system, appointed by the secretary.

(b) Appointments to the task force must be made by August 1, 2022. Each member shall serve at the pleasure of the official who appointed the member. A vacancy on the task force must be filled in the same manner as the original appointment.

(c) The task force shall elect a chair from among its members.

(d) The task force shall convene no later than September 1, 2022. The task force shall meet monthly or upon the call of the chair. The task force shall hold its meetings through teleconference or other electronic means.

(4) DUTIES.—The duties of the task force include all of the following:

(a) Analyzing statistical data regarding children in out-of-home care who are missing and the reasons why the children are missing, if known.

(b) Identifying the root causes of why children go missing

while in out-of-home care and how to prevent children from going missing while in out-of-home care.

(c) Assessing the relationship between children who go missing from out-of-home care and the risks of such children becoming victims of human trafficking.

(d) Assessing the comprehensiveness and effectiveness of existing policies and procedures for preventing children in out-of-home care from going missing, for promptly determining whether such children are missing, and for locating such children.

(e) Evaluating the state's approaches to reporting on the individual status of children missing from out-of-home care and the results of the efforts to locate such children, including, but not limited to, the use of technology, training, communication, and cooperation.

(f) Measuring the overall performance of efforts to locate and recover children missing from out-of-home care, including, but not limited to, the communication and response between community-based care lead agencies, the department, and other entities.

(g) Collaborating with the Florida Institute for Child Welfare to identify best practices used in other states for monitoring the location of children in out-of-home care who go missing, and evaluating whether such practices should be adopted in this state.

(h) Submitting recommendations to improve policies, procedures, and systems in this state, including, but not limited to, technology, training, communication, and cooperation, so that all entities are effectively monitoring

children in out-of-home care, responding appropriately when such children go missing, and preventing such children from going missing while in out-of-home care.

(5) FOCUS GROUPS.—The Florida Institute for Child Welfare shall conduct focus groups with children in out-of-home care and young adults who aged out of the foster care system to assist the task force in fulfilling its duties. The focus groups shall, at a minimum, consider the reasons why such children seek to leave their out-of-home placement, and identify opportunities and resources to assist and prevent children from leaving their placements and to facilitate the return of such missing children. The institute shall submit the findings from the focus groups to the task force by April 1, 2023.

(6) REPORTS.—

(a) Through October 1, 2023, the department shall provide monthly reports to the task force to assist the task force in fulfilling its duties. The monthly reports must, at a minimum, address the number and percentage of children in out-of-home care who have been reported missing; the reasons why such children are missing, if known; and the length of time between when such children are reported missing and their recovery or return. The monthly report must categorize the required data by age, county, community-based care lead agency, and reasons why such children are missing, if known.

(b) 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 that compiles the findings and recommendations of the task force.

(7) REPEAL.—This section is repealed June 30, 2024, unless

reviewed and saved from repeal by the Legislature.

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

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 15, 2022

I respectfully request that **Senate Bill #1358**, relating to Task Force on the Monitoring of Children in Out-of-Home Care, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Darryl Ervin Rouson
Florida Senate, District 19

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 Appropriations

BILL:	PCS/CS/SB 1430 (732288)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Banking and Insurance Committee; and Senator Burgess
SUBJECT:	Insolvent Insurers
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	**Fav/CS**
2.	Sanders	Betta	AEG	**Recommend: Fav/CS**
3.	Sanders	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1430 amends several provisions of the Florida Insurance Code related to the Office of Insurance Regulation (OIR) and the Florida Insurance Guaranty Association (FIGA), and the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA). The FWCIGA provides a mechanism for the payment of covered workers' compensation claims to avoid delay and financial loss to claimants due to the insolvency of a workers' compensation insurer. The FIGA provides a mechanism for the payment of covered claims under certain lines of property and casualty insurance policies to avoid delay and financial loss due to the financial insolvency of an insurer. Specifically, the bill:

- Provides that past loss experience and prospective loss experience for insolvent insurers must be used in the determination and fixing of workers' compensation rates, and that data previously reported by insolvent insurers may be used to assess the impact on rates;
- Authorizes insurers to make advance assessment payments to the FIGA in quarterly installments;
- Authorizes an insurer to forego recouping advances of assessments to the FIGA;
- Requires insurers electing to not recoup advances of assessments made to the FIGA to either reduce a recorded asset to zero or record as no asset, depending on the levying mechanism prescribed under the statute;
- Clarifies calculation of FIGA quarterly payments for those insurers who elect not to collect from policyholders;

- Requires insurers making assessment payments to the FIGA to file reconciliation reports on a form and schedule adopted by the FIGA regardless of assessment payment method;
- Authorizes the Workers' Compensation Insurance Guaranty Association (WCIGA) to allow an insurer to make advance assessment payments in a single payment or on a quarterly basis based on cash-flow needs;
- Reduces the frequency of annual reconciliation reports subsequently filed with the WCIGA after the assessment year from a period of three years to a period of two years;
- Clarifies that an assessment paid before surcharges are collected is an advance; and
- Makes additional technical and conforming changes.

The bill provides that the officers and directors of an insolvent insurer may thereafter serve as an officer or director of an authorized insurer unless the OIR enters an order under section 624.310, Florida Statutes, demonstrating that the personal actions or omissions of the officer or director were a significant contributing cause to the insolvency.

The bill does not impact state revenues or expenditures.

The bill takes effective July 1, 2022.

II. Present Situation:

Officers and Directors of Insolvent Insurers

In general, Florida law gives the OIR broad authority to deny, suspend, or revoke an insurer's authority to transact insurance in Florida if it finds the insurer's officers and directors to be:

- Incompetent or untrustworthy;
- So lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public;
- So lacking in insurance experience, ability, and standing as to jeopardize the reasonable promise of successful operation; or
- Affiliated directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders, stockholders, investors, creditors, or the public, by manipulation of assets, accounts, or reinsurance or by bad faith.[1]

When an insurer becomes insolvent, current law requires the OIR to deny an officer or director of the insolvent insurer from thereafter serving in the same capacity for another insurer if the officer or director served in that capacity within two years preceding the insolvency of the insurer, unless the officer or director demonstrates to the OIR that his or her personal actions or omissions were not a significant contributing cause to the insolvency.[2]

[1] Section 624.404(3)(a), F.S.
[2] Section 624.4073, F.S.

Regulation of Property Insurance Rates

Part I of ch. 627, F.S., is the Rating Law[3] governing property, casualty, and surety insurance that covers subjects of insurance resident, located, or to be performed in this state.[4] The Rating Law provides the rates for all classes of insurance it governs may not be excessive, inadequate, or unfairly discriminatory.[5] Though the terms "rate" and "premium" are often used interchangeably, the rating law specifies "rate" is the unit charge that is multiplied by the measure of exposure or amount of insurance specified in the policy to determine the premium, which is the consideration paid by the consumer.[6]

All insurers or rating organizations must file rates with the OIR either 90 days before the proposed effective date of a new rate, which is considered a "file and use" rate filing, or 30 days after the effective date of a new rate, which is considered a "use and file" rate filing.

Upon receiving a rate filing, the OIR reviews the filing to determine if the rate is excessive, inadequate, or unfairly discriminatory. The OIR makes that determination in accordance with generally acceptable actuarial techniques and, in a property insurance rate filing, considers the following:

- Past and prospective loss experience;
- Past and prospective expenses;
- The degree of competition among insurers for the risk insured;
- Investment income reasonably expected by the insurer;
- The reasonableness of the judgment reflected in the rate filing;
- Dividends, savings, or unabsorbed premium deposits returned to policyholders;
- The adequacy of loss reserves;
- The cost of reinsurance;
- Trend factors, including trends in actual losses per insured unit for the insurer;
- Conflagration and catastrophe hazards;
- Projected hurricane losses;
- Projected flood losses, if the policy covers the risk of flood;
- A reasonable margin for underwriting profit and contingencies; and
- Other relevant factors that affect the frequency or severity of claims or expenses.

Workers' Compensation Reporting Requirements and Rating Factors

Florida law currently requires workers' compensation insurers to record and report certain loss, expense, and claims experience to aid the OIR in making determinations concerning the adequacy of worker's compensation experience for ratemaking purposes.[7] Additionally, insurers are required to provide the following information annually on both Florida experience and nationwide experience separately:

- Payrolls by classification;

[3] Section 627.011, F.S.
[4] Section 627.021, F.S.
[5] Section 627.062(1), F.S.
[6] Section 627.041, F.S.
[7] Section 627.914(1), F.S.

- Manual premiums by classification;
- Standard premiums by classification;
- Losses by classification and injury type; and
- Expenses.[8]

Section 627.072, F.S., in turn governs the admissibility of factors to be used in the determination and fixing of workers' compensation insurance rates. The following factors are used for such purpose:

- The past loss experience and prospective loss experience within and outside Florida;
- The conflagration and catastrophe hazards;
- A reasonable margin for underwriting profit and contingencies;
- Dividends, savings, and unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;
- Investment income on unearned premium reserves and loss reserves;
- Past expenses and prospective expenses, both countrywide and those specifically applicable to Florida; and
- All other relevant factors, including judgment factors, within and outside of Florida.[9]

Insurers satisfy the reporting requirements above by providing their data to the National Council on Compensation Insurance, Inc. (NCCI).[10] When an insurer goes into receivership due to insolvency, it ceases reporting to the NCCI and, therefore, its data is no longer reported to the OIR and not used in the determination and fixing of rates.

Guaranty Associations

Under federal law, insurance companies cannot file for bankruptcy.[11] Instead, they are either rehabilitated or liquidated by their state of domicile. Florida law establishes the system for the treatment of impaired or insolvent insurers[12] in Florida and sets up guaranty payments where necessary.[13] Florida law provides for guaranty associations to ensure policyholders of insolvent insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.[14] A guaranty association is a not-for-profit corporation created by law and directed to protect policyholders from financial losses and delays in claims payment and settlements due to the insolvency of an insurer.[15] Authorized insurers are required

[8] Section 627.914(2), F.S.
[9] Section 627.072(1), F.S.
[10] *See* Rule 69O-189.0055, F.A.C.
[11] 11 U.S.C. s. 109(b)(2).
[12] An "insolvent insurer" means an insurer that was authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review. Section 631.904(4), F.S.
[13] Chapter 631, F.S.
[14] *See id.*
[15] *See e.g.*, ss. 631.51 and 631.902, F.S.

to participate in the guaranty associations as a condition of transacting insurance business in Florida. Florida operates four guaranty associations including the FIGA[16] and the FWCIGA.[17]

Florida Insurance Guaranty Association

The FIGA provides a "mechanism for the payment of covered claims under certain insurance policies to avoid" delay and financial loss due to the financial insolvency of an insurer.[18] It issues guaranty fund payments and provides related services for all lines of property and casualty insurance with certain exceptions.[19] When a Florida property and casualty insurer becomes insolvent, the FIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims.

The FIGA is funded through the liquidation of insolvent insurers. If an insurer's assets are insufficient to pay all claims, the FIGA can request, and the OIR can levy post-insolvency assessments against property and casualty insurers to obtain funds to pay the remaining claims.[20] All assessments paid by the insurer pursuant to the levied assessment constitute advances of funds from the insurer to the FIGA.[21] The insurer may then, in turn, recoup the advance by applying the uniform assessment percentage levied by the OIR to all its policies of the same kind or line of business as were considered by the OIR in determining its assessment on the insurer.[22]

When the FIGA issues an assessment, it may require each member insurer pay the assessment either in a single payment before policy surcharges are collected (pay and recover), or in quarterly installments after the policy surcharges are collected (collect and remit).[23]

Assessments paid before policy surcharges are collected result in a receivable for policy surcharges collected in the future. Insurers under this assessment methods are further required to file a reconciliation report with the FIGA within 90 days of the end of the assessment year that indicates:

- The amount of the initial payment before the assessment year;
- Whether such amount was based on direct written premium contained in a previous calendar year annual statement or a good faith projection;
- The amount actually collected during the assessment year; and
- Such information contained on a form adopted by the FIGA and provided to the insurer in advance.[24]

[16] Chapter 631, part II, F.S.
[17] Chapter 631, part V, F.S.
[18] Section 631.51, F.S.
[19] Section 631.52, F.S.
[20] Section 631.57, F.S.
[21] Section 631.57(3)(c), F.S.
[22] *See id*.
[23] *See id*.
[24] Section 631.57(3)(f)1.d., F.S.

Florida Workers' Compensation Insurance Guaranty Association

The FWCIGA "provides a mechanism for the payment of covered claims under chapter 440, F.S., to avoid" delay and financial loss to claimants due to the insolvency of a workers' compensation insurer.[25] The FWCIGA services workers' compensation claims against insolvent workers' compensation insurers[26] and self-insurance funds.[27] When a workers' compensation insurer or self-insurance fund becomes insolvent, the FWCIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims.

Like the FIGA, the FWCIGA is funded through the liquidation of insolvent insurers, including a portion of the estates of insolvent insurers in other states. If the assets of the liquidated insurer are insufficient to pay claims, the FWCIGA, in conjunction with the OIR, may order assessments of workers' compensation insurers and self-insurance funds writing workers' compensation coverage in Florida.[28]

In 2016, the method of assessment for the FWCIGA was amended to be more consistent with the methods used to levy assessments by the other Florida guaranty associations.[29] Since the 2016 amendments, the law has provided for two methods by which the FWCIGA can collect assessments from workers' compensation insurers and self-insurance funds.[30] The FWCIGA may choose to fund an assessment by either of the following methods:[31]

- Single payment, subject to true-up (pay and recover)[32] – under this method, the insurer pays the assessment to the FWCIGA and then recovers its payment from its insureds through policy surcharges. The assessment payment is due and payable no earlier than 30 days following written notice of the assessment order. For accounting purposes, the billed surcharges are a receivable and an asset for the purposes of the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles Number 4[33] and would be recorded separately from the liability for the OIR reports; or

[25] Section 631.902, F.S.
[26] "Insurer" means an insurance carrier or self-insurance fund authorized to insure under ch. 440, F.S. For purposes of this act, "insurer" does not include a qualified local government self-insurance fund, as defined in s. 624.4622, F.S., or an individual self-insurer as defined in s. 440.385, F.S. Section 631.904(5), F.S.
[27] "Self-insurance fund" means a group self-insurance fund authorized under s. 624.4621, F.S., a commercial self-insurance fund writing workers' compensation insurance authorized under s. 624.462, F.S., or an assessable mutual insurer authorized under s. 628.6011, F.S. For purposes of this act, the term "self-insurance fund" does not include a qualified local government self-insurance fund, as defined in s. 624.4622, F.S., an independent educational institution self-insurance fund as defined in s. 624.4623, F.S., an electric cooperative self-insurance fund as described in s. 624.4626, F.S., or an individual self-insurer as defined in s. 440.385, F.S. Section 631.904(6), F.S.
[28] Section 631.914, F.S.
[29] Chapter 16-170, L.O.F.
[30] *See* s. 631.914, F.S.
[31] *See id.*
[32] Section 631.914(1)(d), F.S.
[33] *See* National Association of Insurance Commissioners & The Center for Insurance Policy and Research, *Statutory Accounting Principles*, http://www.naic.org/cipr_topics/topic_statutory_accounting_principles.htm (last visited Nov. 4, 2019).

- Installment (collect and remit or pass-through) – under this method, the insurer would bill the insured for the surcharge as policies are written and remit the collected surcharges to the FWCIGA quarterly.[34]

The insurer is required to submit a reconciliation report within 120 days following the end of the 12-month assessment recovery period showing the amount initially paid and the amount of the surcharge collected.[35] This results in a "true-up" of the actual assessment amount if the initial calculation and payment was too low or too high.[36]

III. Effect of Proposed Changes:

Section 1 amends s. 624.4073, F.S., related to officers and directors of insolvent insurers, to require the OIR to enter an order pursuant to s. 624.310, F.S., demonstrating the personal actions or omissions of the officer or director of an insolvent insurer were a significant contributing cause of the insolvency, in order to prevent the officer or director from serving in the same capacity for another insurer. The bill thus eliminates an automatic prohibition against a person serving as an officer or director of an authorized insurer, or having direct or indirect control over selecting or appointing an officer or director, if such person was an officer or director of an insolvent insurer in the two years prior to the insolvency. That prohibition under current law does not apply if the officer or director can demonstrate to the OIR that his or her personal actions or omissions were not a significant contributing cause to the insolvency.

Section 2 amends s. 627.072, F.S., to provide factors used in the determination and fixing of workers' compensation rates must include past loss experience and prospective loss experience for insolvent insurers. The prior reported data for such insurers and other relevant information may be used to assess the impact on rates.

Section 3 amends s. 631.57, F.S., related to the powers and duties of the Florida Insurance Guaranty Association (FIGA), to authorize the association to request the OIR's assessment order authorize insurers to make advance assessment payments in quarterly installments.

The bill provides an insurer discretion to forego recouping advances of assessments made to the association. The bill requires insurers electing to not recoup advances of assessments made to the FIGA to either reduce a recorded asset to zero or record as no asset, depending on the levying mechanism prescribed under the statute. Furthermore, the bill clarifies calculation of FIGA quarterly payments for those insurers who elect not to collect from policyholders.

The bill specifies insurers, regardless of the required assessment payment method, must file one or more reconciliation reports with the association. Each reconciliation report must indicate the amount actually collected during the assessment year and such other information using a form and schedule adopted by the association and provided to the insurer in advance.

The bill makes additional technical changes specific to surcharges.

[34] Section 631.914(1)(d), F.S.
[35] Section 631.914(1)(d)3., F.S.
[36] *See id.*

Section 4 amends s. 631.914, F.S., related to Workers' Compensation Insurance Guaranty Association (association) assessments, to provide the association with discretion to authorize an insurer that is required to pay an assessment before surcharges are collected, to pay the assessment either in a single payment or on a quarterly basis based on cash-flow needs.

The bill reduces the frequency of annual reconciliation reports subsequently filed after the assessment year from a period of three years to a period of two years.

The bill clarifies an assessment paid before surcharges are collected is an advance.

The bill provides technical changes by replacing the term "installment method" with "pass-through method" to reflect current operational terminology of the association.

The bill makes additional conforming changes.

Section 5 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:

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: 624.4073, 627.072, 631.57, and 631.914.

IX. Additional Information:

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

PCS 732288 by Appropriations Committee (Recommended CS by Appropriations Subcommittee on Agriculture, Environment, and General Government):
The committee substitute:

- Requires insurers electing not to recoup assessments made to the Florida Insurance Guaranty Association (FIGA) to either reduce a recorded asset to zero or record as no asset, depending on the levying mechanism prescribed under the statute; and
- Clarifies calculation of FIGA quarterly payments for those insurers who elect not to collect from policyholders.

CS by Banking and Insurance on January 18, 2022:
The committee substitute:

- Amends s. 624.4073, F.S., related to officers and directors of insolvent insurers, shifts the burden for demonstrating the personal actions or omissions of the officer or director of an insolvent insurer were a significant contributing cause of the insolvency to the OIR, rather than on the officer or director to demonstrate his or her personal actions or omissions were not a significant contributing cause of the insolvency.

B. Amendments:

None.


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Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Agriculture, Environment, and General Government)

A bill to be entitled

An act relating to insolvent insurers; amending s. 624.4073, F.S.; revising a prohibition against certain insolvent insurers' former officers or directors serving as officers or directors of an insurer or having direct or indirect control over certain selection or appointment of officers or directors, to allow such activities unless the Office of Insurance Regulation enters a specified order; amending s. 627.072, F.S.; providing required factors to be used in the determination and fixing of rates for premiums paid to insolvent insurers for specified coverages; amending s. 631.57, F.S.; authorizing insurers remitting assessments to the Florida Insurance Guaranty Association, Incorporated, to elect not to recoup advances; specifying requirements for insurers electing not to recoup; revising a requirement for information regarding assessment percentages which must be specified by the Office of Insurance Regulation in orders levying assessments; authorizing the association to request that orders levying assessments issued by the office authorize a certain installment frequency for the remittance of advance payments by insurers; revising the requirement that certain insurers make payments, rather than initial payments, on a certain basis; requiring insurers to


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make quarterly payments to association under certain circumstances; revising insurer reconciliation reporting requirements; providing reconciliation requirements for surcharges collected from policyholders; requiring insurers to treat the failure of an insured to pay a surcharge, rather than a recoupment charge, as a failure to pay the premium; revising construction; amending s. 631.914, F.S.; revising provisions relating to insurers' collection of surcharges and payments of assessments to the Florida Workers' Compensation Insurance Guaranty Association, Incorporated; providing an effective date.

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

Section 1. Section 624.4073, Florida Statutes, is amended to read:

624.4073 Officers and directors of insolvent insurers.—Any person who was an officer or director of an insurer doing business in this state and who served in that capacity within the 2-year period before the date the insurer became insolvent, for any insolvency that occurs on or after July 1, 2002, may ~~not~~ thereafter serve as an officer or director of an insurer authorized in this state or have direct or indirect control over the selection or appointment of an officer or director through contract, trust, or by operation of law, unless the office enters an order pursuant to s. 624.310 demonstrating that the ~~officer or director demonstrates that his or her~~ personal

actions or omissions of the officer or director were ~~not~~ a significant contributing cause to the insolvency.

Section 2. Subsection (1) of section 627.072, Florida Statutes, is amended to read:

627.072 Making and use of rates.—

(1) As to workers' compensation and employer's liability insurance, the following factors must ~~shall~~ be used in the determination and fixing of rates:

(a) The past loss experience and prospective loss experience within and outside this state;

(b) The impact resulting from the past loss experience and prospective loss experience for insurers whose data are missing from statewide experience due to insolvency. Prior reported data for such insurers and all other relevant information may be used to assess the impact on rates;

(c) The conflagration and catastrophe hazards;

(d) ~~(c)~~ A reasonable margin for underwriting profit and contingencies;

(e) ~~(d)~~ Dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(f) ~~(e)~~ Investment income on unearned premium reserves and loss reserves;

(g) ~~(f)~~ Past expenses and prospective expenses, both those countrywide and those specifically applicable to this state; and

(h) ~~(g)~~ All other relevant factors, including judgment factors, within and outside this state.

Section 3. Paragraphs (c) and (f) through (i) of subsection (3) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(3)

(c) The Legislature finds and declares that all assessments paid by an insurer or insurer group as a result of a levy by the office, including assessments levied pursuant to paragraph (a) and emergency assessments levied pursuant to paragraph (e), constitute advances of funds from the insurer to the association. An insurer may fully recoup such advances by applying the uniform assessment percentage levied by the office to all policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer or insurer group as set forth in paragraph (f). An insurer remitting an assessment to the association as required by subparagraph (f)1. or subparagraph (f)2. may elect not to recoup advances.

1. Assessments levied under subparagraph (f)1. are paid before policy surcharges are collected and result in a receivable for policy surcharges collected in the future. This amount, to the extent it is likely that it will be realized, meets the definition of an admissible asset as specified in the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4. The asset must ~~shall~~ be established and recorded separately from the liability regardless of whether it is based on a retrospective or prospective premium-based assessment. If an insurer is unable to fully recoup the amount of the assessment because of a reduction in writings or withdrawal from the market, the amount recorded as an asset must ~~shall~~ be reduced to the amount reasonably expected to be recouped. If an insurer elects not to recoup, the

amount recorded as an asset must be reduced to zero.

2. Unless an insurer elects not to recoup, assessments levied under subparagraph (f)2. are paid after policy surcharges are collected so that the recognition of assets is based on actual premium written offset by the obligation to the association. If an insurer elects not to recoup, no asset shall be recorded.

(f)1. The association, office, and insurers remitting assessments pursuant to paragraph (a) or paragraph (e) must comply with the following:

a. In the order levying an assessment, the office shall specify the actual percentage amount to be advanced to the association and thereafter collected uniformly from all the policyholders of insurers subject to the assessment and the date on which the assessment year begins, which may not begin before 90 days after the association board certifies such an assessment.

b. Insurers shall make an initial payment to the association before the beginning of the assessment year on or before the date specified in the order of the office. Each insurer shall have at least 30 days' written notice as to the date on which the initial assessment payment is due and payable. The association may request that the order issued by the office authorize insurers to remit the advance payments in four quarterly installments.

c. Insurers that have written insurance in the calendar year before the year in which the assessment is certified by the board shall make payments ~~an initial payment~~ based on the direct written premium in this state for the classes protected by the

account from the previous calendar year as set forth in the insurer's annual statement, multiplied by the uniform percentage of premium specified in the order issued by the office. Insurers that have not written insurance in the previous calendar year in any of the lines under the account which are being assessed, but which are writing insurance as of, or after, the date the board certifies the assessment to the office, shall pay an amount based on a good faith estimate of the amount of direct written premium anticipated to be written in the subject lines of business for the assessment year, multiplied by the uniform percentage of premium specified in the order issued by the office.

d. Insurers shall file one or more ~~a~~ reconciliation reports ~~report~~ with the association which indicate ~~indicates~~ the amount of ~~the initial~~ payment to the association ~~before the assessment year~~, whether such amount was based on direct written premium contained in a previous calendar year annual statement or a good faith projection, the amount actually collected during the assessment year, and such other information contained on a form and schedule adopted by the association and provided to the insurers in advance. If the insurer collected from policyholders more surcharges than the amount initially paid, the insurer shall pay the excess amount to the association. If the insurer collected surcharges from policyholders in an amount that ~~which~~ is less than the amount initially paid to the association, the association shall credit the insurer that amount against future assessments. Such payment reconciliation report, and any payment of excess amounts collected from policyholders, shall be completed and remitted to the association within 90 days after



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the end of the assessment year. The association shall send a final reconciliation report on all insurers to the office within 120 days after each assessment year.

e. Insurers remitting reconciliation reports under this paragraph to the association are subject to s. 626.9541(1)(e).

2. For assessments required under paragraph (a) or paragraph (e), the association may use a quarterly installment method instead of the method described in sub-subparagraphs 1.b. and c. or in combination thereof based on the association's projected cash flow. If the association projects that it has cash on hand for the payment of anticipated claims in the applicable account for at least 6 months, the board may make an estimate of the assessment needed and may recommend to the office the assessment percentage that may be collected as a quarterly assessment. The office may, in the order levying the assessment on insurers, specify that the assessment is due and payable quarterly as the funds are collected from insureds throughout the assessment year, in which case the assessment shall be a uniform percentage of premium collected during the assessment year and shall be collected from all policyholders with policies in the classes protected by the account. All insurers shall collect the assessment without regard to whether the insurers reported premium in the year preceding the assessment. Insurers are not required to advance funds if the association and the office elect to use the quarterly installment option. All funds collected shall be retained by the association for the payment of current or future claims. This subparagraph does not alter the obligation of an insurer to remit assessments levied pursuant to this subsection to the



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association. Notwithstanding this subparagraph, an insurer may elect not to collect from policyholders, in which case such insurer must make quarterly payments to the association equal to the amount of premium written in the previous quarter for policies in the classes protected by the account multiplied by the uniform percentage of premium set forth in the order levying the assessment. Insurers shall file one or more reconciliation reports with the association which indicate the amount actually collected during the assessment year and such other information using a form and schedule adopted by the association and provided to the insurers in advance.

(g) Insurers shall treat the failure of an insured to pay a surcharge ~~recoupment charge~~ as a failure to pay the premium.

(h) Assessments levied under this subsection are levied upon insurers. This subsection does not create a cause of action by a policyholder with respect to the levying of, or a policyholder's duty to pay, such assessments and related surcharges.

(i) Assessments levied under this subsection are not premium and are not subject to the premium tax, to any fees, or to any commissions. An insurer is liable for any surcharges ~~emergency assessments~~ that the insurer collects and ~~shall treat the failure of an insured to pay an emergency assessment as a failure to pay the premium. An insurer~~ is not liable for uncollectible surcharges ~~emergency assessments~~.

Section 4. Paragraphs (c) and (d) of subsection (1) and paragraph (c) of subsection (4) of section 631.914, Florida Statutes, are amended to read:

631.914 Assessments.—



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(1)

(c) The office shall levy the uniform surcharge percentage on all policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer. Member insurers shall collect policy surcharges at a uniform percentage rate on new and renewal policies issued and effective during the assessment year ~~period of 12 months~~ beginning on January 1, April 1, July 1, or October 1, whichever is the first day of the following calendar quarter as specified in an order issued by the office. The policy surcharge may not begin until 90 days after the board of directors certifies the assessment.

(d) The association may use a pass-through ~~an installment~~ method to require the insurer to remit the policy surcharge as collected or may require the insurer to remit the assessment to the association before collecting the policy surcharge.

1. If the association elects to use the pass-through ~~installment~~ method, the office may, in the order levying the assessment on insurers, specify that the policy surcharge is due and payable quarterly as collected throughout the assessment year. Insurers shall collect policy surcharges at a uniform percentage rate specified by order as described in paragraph (c). Insurers are not required to advance funds if the association and the office elect to use the pass-through ~~installment~~ option. Assessments levied under this subparagraph are paid after policy surcharges are collected, and the recognition of assets is based on actual policy surcharges collected offset by the obligation to the association.

2. If the association elects to require insurers to remit



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the assessment before surcharging the policy, the following shall apply:

a. On or before the date specified in the order of the office, insurers shall make an initial advance payment to the association of the percentage specified in the order multiplied by the insurer's direct written premiums received in this state for the preceding calendar year for the kinds of insurance included within such account before the beginning of the assessment year. The board may authorize an insurer to pay an assessment in a single payment or on a quarterly basis, based on cash-flow needs.

b. The levy order shall provide each insurer so assessed at least 30 days' written notice of the date the initial assessment payment is due and payable by the insurer.

c. Insurers shall collect policy surcharges at a uniform percentage rate specified by the order, as described in paragraph (c).

d. Assessments levied under this subparagraph and paid by an insurer constitute advances of funds from the insurer to the association and result in a receivable for policy surcharges to be billed in the future. The amount of billed policy surcharges, to the extent it is likely that it will be realized, meets the definition of an admissible asset as specified in the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4. The asset shall be established and recorded separately from the liability. If an insurer is unable to fully recoup the amount of the assessment, the amount recorded as an asset shall be reduced to the amount reasonably expected to be recouped.

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3. Insurers must submit a reconciliation report to the association within 120 days after the end of the 12-month assessment year ~~period~~ and annually thereafter for a period of 2 ~~3~~ years. The report must indicate the amount of the initial payment or installment payments made to the association and the amount of policy surcharges collected for the assessment year. If the insurer's reconciled obligation is more than the amount paid to the association, the insurer shall pay the excess policy surcharges collected to the association. If the insurer's reconciled obligation is less than the initial amount paid to the association, the association shall return the overpayment to the insurer.

(4)

~~(c) The board may allow an insurer to pay an assessment on a quarterly basis.~~

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1430
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Banking and Insurance Committee; and Senator Burgess
SUBJECT:	Insolvent Insurers
DATE:	March 2, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	**Fav/CS**
2.	Sanders	Betta	AEG	**Recommend: Fav/CS**
3.	Sanders	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1430 amends several provisions of the Florida Insurance Code related to the Office of Insurance Regulation (OIR) and the Florida Insurance Guaranty Association (FIGA), and the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA). The FWCIGA provides a mechanism for the payment of covered workers' compensation claims to avoid delay and financial loss to claimants due to the insolvency of a workers' compensation insurer. The FIGA provides a mechanism for the payment of covered claims under certain lines of property and casualty insurance policies to avoid delay and financial loss due to the financial insolvency of an insurer. Specifically, the bill:

- Provides that past loss experience and prospective loss experience for insolvent insurers must be used in the determination and fixing of workers' compensation rates, and that data previously reported by insolvent insurers may be used to assess the impact on rates;
- Authorizes insurers to make advance assessment payments to the FIGA in quarterly installments;
- Authorizes an insurer to forego recouping advances of assessments to the FIGA;
- Requires insurers electing to not recoup advances of assessments made to the FIGA to either reduce a recorded asset to zero or record as no asset, depending on the levying mechanism prescribed under the statute;
- Clarifies calculation of FIGA quarterly payments for those insurers who elect not to collect from policyholders;

- Requires insurers making assessment payments to the FIGA to file reconciliation reports on a form and schedule adopted by the FIGA regardless of assessment payment method;
- Authorizes the Workers' Compensation Insurance Guaranty Association (WCIGA) to allow an insurer to make advance assessment payments in a single payment or on a quarterly basis based on cash-flow needs;
- Reduces the frequency of annual reconciliation reports subsequently filed with the WCIGA after the assessment year from a period of three years to a period of two years;
- Clarifies that an assessment paid before surcharges are collected is an advance; and
- Makes additional technical and conforming changes.

The bill provides that the officers and directors of an insolvent insurer may thereafter serve as an officer or director of an authorized insurer unless the OIR enters an order under section 624.310, Florida Statutes, demonstrating that the personal actions or omissions of the officer or director were a significant contributing cause to the insolvency.

The bill does not impact state revenues or expenditures.

The bill takes effective July 1, 2022.

II. Present Situation:

Officers and Directors of Insolvent Insurers

In general, Florida law gives the OIR broad authority to deny, suspend, or revoke an insurer's authority to transact insurance in Florida if it finds the insurer's officers and directors to be:

- Incompetent or untrustworthy;
- So lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public;
- So lacking in insurance experience, ability, and standing as to jeopardize the reasonable promise of successful operation; or
- Affiliated directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders, stockholders, investors, creditors, or the public, by manipulation of assets, accounts, or reinsurance or by bad faith.[1]

When an insurer becomes insolvent, current law requires the OIR to deny an officer or director of the insolvent insurer from thereafter serving in the same capacity for another insurer if the officer or director served in that capacity within two years preceding the insolvency of the insurer, unless the officer or director demonstrates to the OIR that his or her personal actions or omissions were not a significant contributing cause to the insolvency.[2]

[1] Section 624.404(3)(a), F.S.
[2] Section 624.4073, F.S.

Regulation of Property Insurance Rates

Part I of ch. 627, F.S., is the Rating Law[3] governing property, casualty, and surety insurance that covers subjects of insurance resident, located, or to be performed in this state.[4] The Rating Law provides the rates for all classes of insurance it governs may not be excessive, inadequate, or unfairly discriminatory.[5] Though the terms "rate" and "premium" are often used interchangeably, the rating law specifies "rate" is the unit charge that is multiplied by the measure of exposure or amount of insurance specified in the policy to determine the premium, which is the consideration paid by the consumer.[6]

All insurers or rating organizations must file rates with the OIR either 90 days before the proposed effective date of a new rate, which is considered a "file and use" rate filing, or 30 days after the effective date of a new rate, which is considered a "use and file" rate filing.

Upon receiving a rate filing, the OIR reviews the filing to determine if the rate is excessive, inadequate, or unfairly discriminatory. The OIR makes that determination in accordance with generally acceptable actuarial techniques and, in a property insurance rate filing, considers the following:

- Past and prospective loss experience;
- Past and prospective expenses;
- The degree of competition among insurers for the risk insured;
- Investment income reasonably expected by the insurer;
- The reasonableness of the judgment reflected in the rate filing;
- Dividends, savings, or unabsorbed premium deposits returned to policyholders;
- The adequacy of loss reserves;
- The cost of reinsurance;
- Trend factors, including trends in actual losses per insured unit for the insurer;
- Conflagration and catastrophe hazards;
- Projected hurricane losses;
- Projected flood losses, if the policy covers the risk of flood;
- A reasonable margin for underwriting profit and contingencies; and
- Other relevant factors that affect the frequency or severity of claims or expenses.

Workers' Compensation Reporting Requirements and Rating Factors

Florida law currently requires workers' compensation insurers to record and report certain loss, expense, and claims experience to aid the OIR in making determinations concerning the adequacy of worker's compensation experience for ratemaking purposes.[7] Additionally, insurers are required to provide the following information annually on both Florida experience and nationwide experience separately:

- Payrolls by classification;

[3] Section 627.011, F.S.
[4] Section 627.021, F.S.
[5] Section 627.062(1), F.S.
[6] Section 627.041, F.S.
[7] Section 627.914(1), F.S.

- Manual premiums by classification;
- Standard premiums by classification;
- Losses by classification and injury type; and
- Expenses.[8]

Section 627.072, F.S., in turn governs the admissibility of factors to be used in the determination and fixing of workers' compensation insurance rates. The following factors are used for such purpose:

- The past loss experience and prospective loss experience within and outside Florida;
- The conflagration and catastrophe hazards;
- A reasonable margin for underwriting profit and contingencies;
- Dividends, savings, and unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;
- Investment income on unearned premium reserves and loss reserves;
- Past expenses and prospective expenses, both countrywide and those specifically applicable to Florida; and
- All other relevant factors, including judgment factors, within and outside of Florida.[9]

Insurers satisfy the reporting requirements above by providing their data to the National Council on Compensation Insurance, Inc. (NCCI).[10] When an insurer goes into receivership due to insolvency, it ceases reporting to the NCCI and, therefore, its data is no longer reported to the OIR and not used in the determination and fixing of rates.

Guaranty Associations

Under federal law, insurance companies cannot file for bankruptcy.[11] Instead, they are either rehabilitated or liquidated by their state of domicile. Florida law establishes the system for the treatment of impaired or insolvent insurers[12] in Florida and sets up guaranty payments where necessary.[13] Florida law provides for guaranty associations to ensure policyholders of insolvent insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.[14] A guaranty association is a not-for-profit corporation created by law and directed to protect policyholders from financial losses and delays in claims payment and settlements due to the insolvency of an insurer.[15] Authorized insurers are required

[8] Section 627.914(2), F.S.
[9] Section 627.072(1), F.S.
[10] *See* Rule 69O-189.0055, F.A.C.
[11] 11 U.S.C. s. 109(b)(2).
[12] An "insolvent insurer" means an insurer that was authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review. Section 631.904(4), F.S.
[13] Chapter 631, F.S.
[14] *See id.*
[15] *See e.g.*, ss. 631.51 and 631.902, F.S.

to participate in the guaranty associations as a condition of transacting insurance business in Florida. Florida operates four guaranty associations including the FIGA[16] and the FWCIGA.[17]

Florida Insurance Guaranty Association

The FIGA provides a "mechanism for the payment of covered claims under certain insurance policies to avoid" delay and financial loss due to the financial insolvency of an insurer.[18] It issues guaranty fund payments and provides related services for all lines of property and casualty insurance with certain exceptions.[19] When a Florida property and casualty insurer becomes insolvent, the FIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims.

The FIGA is funded through the liquidation of insolvent insurers. If an insurer's assets are insufficient to pay all claims, the FIGA can request, and the OIR can levy post-insolvency assessments against property and casualty insurers to obtain funds to pay the remaining claims.[20] All assessments paid by the insurer pursuant to the levied assessment constitute advances of funds from the insurer to the FIGA.[21] The insurer may then, in turn, recoup the advance by applying the uniform assessment percentage levied by the OIR to all its policies of the same kind or line of business as were considered by the OIR in determining its assessment on the insurer.[22]

When the FIGA issues an assessment, it may require each member insurer pay the assessment either in a single payment before policy surcharges are collected (pay and recover), or in quarterly installments after the policy surcharges are collected (collect and remit).[23]

Assessments paid before policy surcharges are collected result in a receivable for policy surcharges collected in the future. Insurers under this assessment methods are further required to file a reconciliation report with the FIGA within 90 days of the end of the assessment year that indicates:

- The amount of the initial payment before the assessment year;
- Whether such amount was based on direct written premium contained in a previous calendar year annual statement or a good faith projection;
- The amount actually collected during the assessment year; and
- Such information contained on a form adopted by the FIGA and provided to the insurer in advance.[24]

[16] Chapter 631, part II, F.S.
[17] Chapter 631, part V, F.S.
[18] Section 631.51, F.S.
[19] Section 631.52, F.S.
[20] Section 631.57, F.S.
[21] Section 631.57(3)(c), F.S.
[22] *See id*.
[23] *See id*.
[24] Section 631.57(3)(f)1.d., F.S.

Florida Workers' Compensation Insurance Guaranty Association

The FWCIGA "provides a mechanism for the payment of covered claims under chapter 440, F.S., to avoid" delay and financial loss to claimants due to the insolvency of a workers' compensation insurer.[25] The FWCIGA services workers' compensation claims against insolvent workers' compensation insurers[26] and self-insurance funds.[27] When a workers' compensation insurer or self-insurance fund becomes insolvent, the FWCIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims.

Like the FIGA, the FWCIGA is funded through the liquidation of insolvent insurers, including a portion of the estates of insolvent insurers in other states. If the assets of the liquidated insurer are insufficient to pay claims, the FWCIGA, in conjunction with the OIR, may order assessments of workers' compensation insurers and self-insurance funds writing workers' compensation coverage in Florida.[28]

In 2016, the method of assessment for the FWCIGA was amended to be more consistent with the methods used to levy assessments by the other Florida guaranty associations.[29] Since the 2016 amendments, the law has provided for two methods by which the FWCIGA can collect assessments from workers' compensation insurers and self-insurance funds.[30] The FWCIGA may choose to fund an assessment by either of the following methods:[31]

- Single payment, subject to true-up (pay and recover)[32] – under this method, the insurer pays the assessment to the FWCIGA and then recovers its payment from its insureds through policy surcharges. The assessment payment is due and payable no earlier than 30 days following written notice of the assessment order. For accounting purposes, the billed surcharges are a receivable and an asset for the purposes of the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles Number 4[33] and would be recorded separately from the liability for the OIR reports; or

[25] Section 631.902, F.S.
[26] "Insurer" means an insurance carrier or self-insurance fund authorized to insure under ch. 440, F.S. For purposes of this act, "insurer" does not include a qualified local government self-insurance fund, as defined in s. 624.4622, F.S., or an individual self-insurer as defined in s. 440.385, F.S. Section 631.904(5), F.S.
[27] "Self-insurance fund" means a group self-insurance fund authorized under s. 624.4621, F.S., a commercial self-insurance fund writing workers' compensation insurance authorized under s. 624.462, F.S., or an assessable mutual insurer authorized under s. 628.6011, F.S. For purposes of this act, the term "self-insurance fund" does not include a qualified local government self-insurance fund, as defined in s. 624.4622, F.S., an independent educational institution self-insurance fund as defined in s. 624.4623, F.S., an electric cooperative self-insurance fund as described in s. 624.4626, F.S., or an individual self-insurer as defined in s. 440.385, F.S. Section 631.904(6), F.S.
[28] Section 631.914, F.S.
[29] Chapter 16-170, L.O.F.
[30] *See* s. 631.914, F.S.
[31] *See id.*
[32] Section 631.914(1)(d), F.S.
[33] *See* National Association of Insurance Commissioners & The Center for Insurance Policy and Research, *Statutory Accounting Principles*, http://www.naic.org/cipr_topics/topic_statutory_accounting_principles.htm (last visited Nov. 4, 2019).

- Installment (collect and remit or pass-through) – under this method, the insurer would bill the insured for the surcharge as policies are written and remit the collected surcharges to the FWCIGA quarterly.[34]

The insurer is required to submit a reconciliation report within 120 days following the end of the 12-month assessment recovery period showing the amount initially paid and the amount of the surcharge collected.[35] This results in a "true-up" of the actual assessment amount if the initial calculation and payment was too low or too high.[36]

III. Effect of Proposed Changes:

Section 1 amends s. 624.4073, F.S., related to officers and directors of insolvent insurers, to require the OIR to enter an order pursuant to s. 624.310, F.S., demonstrating the personal actions or omissions of the officer or director of an insolvent insurer were a significant contributing cause of the insolvency, in order to prevent the officer or director from serving in the same capacity for another insurer. The bill thus eliminates an automatic prohibition against a person serving as an officer or director of an authorized insurer, or having direct or indirect control over selecting or appointing an officer or director, if such person was an officer or director of an insolvent insurer in the two years prior to the insolvency. That prohibition under current law does not apply if the officer or director can demonstrate to the OIR that his or her personal actions or omissions were not a significant contributing cause to the insolvency.

Section 2 amends s. 627.072, F.S., to provide factors used in the determination and fixing of workers' compensation rates must include past loss experience and prospective loss experience for insolvent insurers. The prior reported data for such insurers and other relevant information may be used to assess the impact on rates.

Section 3 amends s. 631.57, F.S., related to the powers and duties of the Florida Insurance Guaranty Association (FIGA), to authorize the association to request the OIR's assessment order authorize insurers to make advance assessment payments in quarterly installments.

The bill provides an insurer discretion to forego recouping advances of assessments made to the association. The bill requires insurers electing to not recoup advances of assessments made to the FIGA to either reduce a recorded asset to zero or record as no asset, depending on the levying mechanism prescribed under the statute. Furthermore, the bill clarifies calculation of FIGA quarterly payments for those insurers who elect not to collect from policyholders.

The bill specifies insurers, regardless of the required assessment payment method, must file one or more reconciliation reports with the association. Each reconciliation report must indicate the amount actually collected during the assessment year and such other information using a form and schedule adopted by the association and provided to the insurer in advance.

The bill makes additional technical changes specific to surcharges.

[34] Section 631.914(1)(d), F.S.
[35] Section 631.914(1)(d)3., F.S.
[36] *See id.*

Section 4 amends s. 631.914, F.S., related to Workers' Compensation Insurance Guaranty Association (association) assessments, to provide the association with discretion to authorize an insurer that is required to pay an assessment before surcharges are collected, to pay the assessment either in a single payment or on a quarterly basis based on cash-flow needs.

The bill reduces the frequency of annual reconciliation reports subsequently filed after the assessment year from a period of three years to a period of two years.

The bill clarifies an assessment paid before surcharges are collected is an advance.

The bill provides technical changes by replacing the term "installment method" with "pass-through method" to reflect current operational terminology of the association.

The bill makes additional conforming changes.

Section 5 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:

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: 624.4073, 627.072, 631.57, and 631.914.

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 Appropriations on February 28, 2022:
The committee substitute:

- Requires insurers electing not to recoup assessments made to the Florida Insurance Guaranty Association (FIGA) to either reduce a recorded asset to zero or record as no asset, depending on the levying mechanism prescribed under the statute; and
- Clarifies calculation of FIGA quarterly payments for those insurers who elect not to collect from policyholders.

CS by Banking and Insurance on January 18, 2022:
The committee substitute:

- Amends s. 624.4073, F.S., related to officers and directors of insolvent insurers, shifts the burden for demonstrating the personal actions or omissions of the officer or director of an insolvent insurer were a significant contributing cause of the insolvency to the OIR, rather than on the officer or director to demonstrate his or her personal actions or omissions were not a significant contributing cause of the insolvency.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Burgess

597-02090-22 20221430c1

A bill to be entitled

An act relating to insolvent insurers; amending s. 624.4073, F.S.; revising a prohibition against certain insolvent insurers' former officers or directors serving as officers or directors of an insurer or having direct or indirect control over certain selection or appointment of officers or directors, to allow such activities unless the Office of Insurance Regulation enters a specified order; amending s. 627.072, F.S.; providing required factors to be used in the determination and fixing of rates for premiums paid to insolvent insurers for specified coverages; amending s. 631.57, F.S.; authorizing insurers remitting assessments to the Florida Insurance Guaranty Association, Incorporated, to elect not to recoup advances; revising a requirement for information regarding assessment percentages which must be specified by the Office of Insurance Regulation in orders levying assessments; authorizing the association to request that orders levying assessments issued by the office authorize a certain installment frequency for the remittance of advance payments by insurers; revising the requirement that certain insurers make payments, rather than initial payments, on a certain basis; revising insurer reconciliation reporting requirements; providing reconciliation requirements for surcharges collected from policyholders; requiring insurers to treat the failure of an insured to pay a surcharge, rather than

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597-02090-22 20221430c1

a recoupment charge, as a failure to pay the premium; revising construction; amending s. 631.914, F.S.; revising provisions relating to insurers' collection of surcharges and payments of assessments to the Florida Workers' Compensation Insurance Guaranty Association, Incorporated; providing an effective date.

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

Section 1. Section 624.4073, Florida Statutes, is amended to read:

624.4073 Officers and directors of insolvent insurers.—Any person who was an officer or director of an insurer doing business in this state and who served in that capacity within the 2-year period before the date the insurer became insolvent, for any insolvency that occurs on or after July 1, 2002, may ~~not~~ thereafter serve as an officer or director of an insurer authorized in this state or have direct or indirect control over the selection or appointment of an officer or director through contract, trust, or by operation of law, unless the office enters an order pursuant to s. 624.310 demonstrating that the ~~officer or director demonstrates that his or her~~ personal actions or omissions of the officer or director were ~~not~~ a significant contributing cause to the insolvency.

Section 2. Subsection (1) of section 627.072, Florida Statutes, is amended to read:

627.072 Making and use of rates.—

(1) As to workers' compensation and employer's liability

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insurance, the following factors must ~~shall~~ be used in the determination and fixing of rates:

(a) The past loss experience and prospective loss experience within and outside this state;

(b) The impact resulting from the past loss experience and prospective loss experience for insurers whose data are missing from statewide experience due to insolvency. Prior reported data for such insurers and all other relevant information may be used to assess the impact on rates;

(c) The conflagration and catastrophe hazards;

(d) ~~(c)~~ A reasonable margin for underwriting profit and contingencies;

(e) ~~(d)~~ Dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(f) ~~(e)~~ Investment income on unearned premium reserves and loss reserves;

(g) ~~(f)~~ Past expenses and prospective expenses, both those countrywide and those specifically applicable to this state; and

(h) ~~(g)~~ All other relevant factors, including judgment factors, within and outside this state.

Section 3. Paragraphs (c) and (f) through (i) of subsection (3) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(3)

(c) The Legislature finds and declares that all assessments paid by an insurer or insurer group as a result of a levy by the office, including assessments levied pursuant to paragraph (a) and emergency assessments levied pursuant to paragraph (e),

constitute advances of funds from the insurer to the association. An insurer may fully recoup such advances by applying the uniform assessment percentage levied by the office to all policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer or insurer group as set forth in paragraph (f). An insurer remitting an assessment to the association as required by subparagraph (f)1. or subparagraph (f)2. may elect not to recoup advances.

1. Assessments levied under subparagraph (f)1. are paid before policy surcharges are collected and result in a receivable for policy surcharges collected in the future. This amount, to the extent it is likely that it will be realized, meets the definition of an admissible asset as specified in the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4. The asset must ~~shall~~ be established and recorded separately from the liability regardless of whether it is based on a retrospective or prospective premium-based assessment. If an insurer is unable to fully recoup the amount of the assessment because of a reduction in writings or withdrawal from the market, the amount recorded as an asset must ~~shall~~ be reduced to the amount reasonably expected to be recouped.

2. Assessments levied under subparagraph (f)2. are paid after policy surcharges are collected so that the recognition of assets is based on actual premium written offset by the obligation to the association.

(f)1. The association, office, and insurers remitting assessments pursuant to paragraph (a) or paragraph (e) must

comply with the following:

a. In the order levying an assessment, the office shall specify the actual percentage amount to be advanced to the association and thereafter collected uniformly from all the policyholders of insurers subject to the assessment and the date on which the assessment year begins, which may not begin before 90 days after the association board certifies such an assessment.

b. Insurers shall make an initial payment to the association before the beginning of the assessment year on or before the date specified in the order of the office. Each insurer shall have at least 30 days' written notice as to the date on which the initial assessment payment is due and payable. The association may request that the order issued by the office authorize insurers to remit the advance payments in four quarterly installments throughout the assessment year.

c. Insurers that have written insurance in the calendar year before the year in which the assessment is certified by the board shall make payments ~~an initial payment~~ based on the direct written premium in this state for the classes protected by the account from the previous calendar year as set forth in the insurer's annual statement, multiplied by the uniform percentage of premium specified in the order issued by the office. Insurers that have not written insurance in the previous calendar year in any of the lines under the account which are being assessed, but which are writing insurance as of, or after, the date the board certifies the assessment to the office, shall pay an amount based on a good faith estimate of the amount of direct written premium anticipated to be written in the subject lines of

business for the assessment year, multiplied by the uniform percentage of premium specified in the order issued by the office.

d. Insurers shall file one or more ~~a~~ reconciliation reports ~~report~~ with the association which indicate ~~indicates~~ the amount of ~~the initial~~ payment to the association ~~before the assessment year~~, whether such amount was based on direct written premium contained in a previous calendar year annual statement or a good faith projection, the amount actually collected during the assessment year, and such other information contained on a form and schedule adopted by the association and provided to the insurers in advance. If the insurer collected from policyholders more surcharges than the amount initially paid, the insurer shall pay the excess amount to the association. If the insurer collected surcharges from policyholders in an amount that ~~which~~ is less than the amount initially paid to the association, the association shall credit the insurer that amount against future assessments. Such payment reconciliation report, and any payment of excess amounts collected from policyholders, shall be completed and remitted to the association within 90 days after the end of the assessment year. The association shall send a final reconciliation report on all insurers to the office within 120 days after each assessment year.

e. Insurers remitting reconciliation reports under this paragraph to the association are subject to s. 626.9541(1)(e).

2. For assessments required under paragraph (a) or paragraph (e), the association may use a quarterly installment method instead of the method described in sub-subparagraphs 1.b. and c. or in combination thereof based on the association's

projected cash flow. If the association projects that it has cash on hand for the payment of anticipated claims in the applicable account for at least 6 months, the board may make an estimate of the assessment needed and may recommend to the office the assessment percentage that may be collected as a quarterly assessment. The office may, in the order levying the assessment on insurers, specify that the assessment is due and payable quarterly as the funds are collected from insureds throughout the assessment year, in which case the assessment shall be a uniform percentage of premium collected during the assessment year and shall be collected from all policyholders with policies in the classes protected by the account. All insurers shall collect the assessment without regard to whether the insurers reported premium in the year preceding the assessment. Insurers are not required to advance funds if the association and the office elect to use the quarterly installment option. All funds collected shall be retained by the association for the payment of current or future claims. This subparagraph does not alter the obligation of an insurer to remit assessments levied pursuant to this subsection to the association. Insurers shall file one or more reconciliation reports with the association which indicate the amount actually collected during the assessment year and such other information using a form and schedule adopted by the association and provided to the insurers in advance.

(g) Insurers shall treat the failure of an insured to pay a surcharge ~~recoupment charge~~ as a failure to pay the premium.

(h) Assessments levied under this subsection are levied upon insurers. This subsection does not create a cause of action

by a policyholder with respect to the levying of, or a policyholder's duty to pay, such assessments and related surcharges.

(i) Assessments levied under this subsection are not premium and are not subject to the premium tax, to any fees, or to any commissions. An insurer is liable for any surcharges ~~emergency assessments~~ that the insurer collects and ~~shall treat the failure of an insured to pay an emergency assessment as a failure to pay the premium. An insurer~~ is not liable for uncollectible surcharges ~~emergency assessments~~.

Section 4. Paragraphs (c) and (d) of subsection (1) and paragraph (c) of subsection (4) of section 631.914, Florida Statutes, are amended to read:

631.914 Assessments.—

(1)

(c) The office shall levy the uniform surcharge percentage on all policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer. Member insurers shall collect policy surcharges at a uniform percentage rate on new and renewal policies issued and effective during the assessment year ~~period of 12 months~~ beginning on January 1, April 1, July 1, or October 1, whichever is the first day of the following calendar quarter as specified in an order issued by the office. The policy surcharge may not begin until 90 days after the board of directors certifies the assessment.

(d) The association may use a pass-through ~~an installment~~ method to require the insurer to remit the policy surcharge as collected or may require the insurer to remit the assessment to

the association before collecting the policy surcharge.

1. If the association elects to use the pass-through ~~installment~~ method, the office may, in the order levying the assessment on insurers, specify that the policy surcharge is due and payable quarterly as collected throughout the assessment year. Insurers shall collect policy surcharges at a uniform percentage rate specified by order as described in paragraph (c). Insurers are not required to advance funds if the association and the office elect to use the pass-through ~~installment~~ option. Assessments levied under this subparagraph are paid after policy surcharges are collected, and the recognition of assets is based on actual policy surcharges collected offset by the obligation to the association.

2. If the association elects to require insurers to remit the assessment before surcharging the policy, the following shall apply:

a. On or before the date specified in the order of the office, insurers shall make an initial advance payment to the association of the percentage specified in the order multiplied by the insurer's direct written premiums received in this state for the preceding calendar year for the kinds of insurance included within such account before the beginning of the assessment year. The board may authorize an insurer to pay an assessment in a single payment or on a quarterly basis, based on cash-flow needs.

b. The levy order shall provide each insurer so assessed at least 30 days' written notice of the date the initial assessment payment is due and payable by the insurer.

c. Insurers shall collect policy surcharges at a uniform

percentage rate specified by the order, as described in paragraph (c).

d. Assessments levied under this subparagraph and paid by an insurer constitute advances of funds from the insurer to the association and result in a receivable for policy surcharges to be billed in the future. The amount of billed policy surcharges, to the extent it is likely that it will be realized, meets the definition of an admissible asset as specified in the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4. The asset shall be established and recorded separately from the liability. If an insurer is unable to fully recoup the amount of the assessment, the amount recorded as an asset shall be reduced to the amount reasonably expected to be recouped.

3. Insurers must submit a reconciliation report to the association within 120 days after the end of the 12-month assessment year ~~period~~ and annually thereafter for a period of 2 ~~3~~ years. The report must indicate the amount of the initial payment or installment payments made to the association and the amount of policy surcharges collected for the assessment year. If the insurer's reconciled obligation is more than the amount paid to the association, the insurer shall pay the excess policy surcharges collected to the association. If the insurer's reconciled obligation is less than the initial amount paid to the association, the association shall return the overpayment to the insurer.

(4)

~~(c) The board may allow an insurer to pay an assessment on a quarterly basis.~~

Section 5. 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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2/28/22
Meeting Date

Appropriations
Committee

1430
Bill Number or Topic

Amendment Barcode (if applicable)

Name Greg Black

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Street

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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:

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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 Appropriations

BILL:	CS/SB 1436
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senator Garcia
SUBJECT:	Human Trafficking
DATE:	February 25, 2022 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1436 amends section 16.617, Florida Statutes, to add the following additional duties to the Statewide Council on Human Trafficking (Council):

- Assess the frequency and extent to which social media platforms are used to assist, facilitate, or support human trafficking within the state;
- Establish a process to detect such use on a consistent basis; and
- Make recommendations on how to stop, reduce, or prevent social media platforms from being used for such purpose.

The Council must implement without undue delay a system to stop, reduce, or prevent social media platforms from being used to assist, facilitate, or support human trafficking within the state to the extent these objectives can be achieved under existing laws.

The bill requires the Florida Alliance to End Human Trafficking (FAEHT), who is the direct support-organization (DSO) of the Council, to develop training on the recognition and reporting of human trafficking for firesafety inspectors, which is eligible for continuing education credit under section 633.216(4), Florida Statutes.

The bill also requires foster parents, as a condition of licensure, and agency staff to successfully complete preservice training related to human trafficking which must be uniform statewide and must include, but need not be limited to:

- Basic information on human trafficking;

- Factors and knowledge on identifying children at risk of human trafficking; and
- Steps that should be taken to prevent at-risk youths from becoming victims of human trafficking.

The bill provides that foster parents, before licensure renewal, and agency staff, during each full year of employment, must complete training related to human trafficking to satisfy the inservice training requirement under current law.

Section 63.092, Florida Statutes, is reenacted for the purpose of incorporating the amendment made to section 409.175, Florida Statutes, by the act.

The bill has no fiscal impact on state government. However, it may have an indeterminate fiscal impact on the DSO by requiring the development of new training for firesafety inspectors. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2022.

II. Present Situation:

Human trafficking is modern day slavery which involves the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining another person for the purpose of exploiting that person.[1] A person may not knowingly, or in reckless disregard of the facts, engage in human trafficking, attempt to engage in human trafficking, or benefit financially by receiving anything of value from participating in a venture that has subjected a person to human trafficking for commercial sexual activity,[2] labor, or services:

- By using coercion;[3]
- Of a child younger than 18 years old or an adult believed by the person to be a child younger than 18 years old;[4] or
- With a mentally defective or mentally incapacitated person, if for commercial sexual activity.[5, 6]

[1] Section 787.06(2)(d), F.S.

[2] Commercial sexual activity means any prostitution, lewdness, or assignation offense or attempt to commit such an offense, and includes a sexually explicit performance and the production of pornography. Section 787.06(2)(b), F.S.

[3] Section 787.06(3)(a)2., (b), (c)2., (d), (e)2., and (f)2., F.S. Section 787.06(2)(a), F.S., defines coercion to include using or threatening to use force against a person; restraining, isolating, or confining a person without lawful authority and against his or her will, or threatening to do so; using lending or other credit methods to establish a debt by a person when labor or services are pledged as a security for the debt, if the reasonably assessed value of the labor or services is not applied toward the liquidation of the debt; destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, other immigration document, or government identification document; causing or threatening to cause financial harm; enticing or luring a person by fraud or deceit; or providing a Schedule I or II controlled substance to a person for the purpose of exploiting that person.

[4] Section 787.06(3)(a)1., (c)1., (e)1., (f)1., and (g), F.S.

[5] Section 787.06(3)(g), F.S., which also specifies that for purposes of this offense, the terms mentally defective and mentally incapacitated person mean the same as defined in s. 794.011(1), F.S.

[6] Section 794.011(1)(a), F.S., defines "mentally defective" to mean a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct. Section 794.011(1)(b), F.S., defines "mentally incapacitated" to mean temporarily incapable of appraising or controlling a person's own conduct due to the

According to the United States Department of State, traffickers in the United States compel victims to engage in commercial sex and to work in both legal and illicit industries, including in hospitality, traveling sales crews, agriculture, janitorial services, construction, landscaping, restaurants, factories, care for persons with disabilities, salon services, massage parlors, retail services, fairs and carnivals, peddling and begging, drug smuggling and distribution, religious institutions, child care, and domestic work.[7] In 2020, the National Human Trafficking Hotline received a total of 51,667 substantive tip reports regarding human trafficking nationwide.[8] Of these reported tips, a total of 2,539 were reported from Florida.[9]

Social Media is used to recruit victims of human trafficking and increase their operations.[10] In particular, sex trafficking recruitment on social media is increasing especially since the beginning of the pandemic.[11] Recruiting victims online is typically considered less risky than recruiting victims in person.[12] Children and youth are being contacted, recruited, and sold for sex on social media.[13] Traffickers lure them in with online friendships and then manipulate them into becoming victims.[14] In 2019, Psychology Today reported that a recent survey found that 70% of more than 1,000 American children between the ages of 13 and 17 used social media several times per day.[15] The National Human Trafficking Hotline also notes that in the same year there were 447 (5.8%) situations where the venue/industry of potential trafficking was online ads,[16] 24 (3%) of which were received from Florida.[17]

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.

[7] These reports were made by phone calls, texts, webchats, emails, or online. U.S. Department of State, Federal Response to Human Trafficking, *About Human Trafficking*, available at https://www.state.gov/humantrafficking-about-human-trafficking/#profile (last visited Feb. 2, 2022).

[8] National Human Trafficking Hotline, *2020 National Hotline Annual Report*, available at https://humantraffickinghotline.org/resources/2020-national-hotline-annual-report (last visited Feb. 2, 2022) (hereinafter cited as "2020 National Hotline Annual Report").

[9] National Human Trafficking Hotline, *National Human Trafficking Hotline Data Report, Florida State Report: 1/1/2020 – 12/31/2020*, July 1. 2021, available at Florida State Report For 2020.docx (humantraffickinghotline.org) (last visited Feb. 2, 2022) (hereinafter cited as "2020 National Human Trafficking Hotline Report for Florida").

[10] Polaris, *Human Trafficking and Social Media*, available at Human Trafficking and Social Media | Polaris (polarisproject.org) (last visited Feb. 2, 2022).

[11] Anderson, M., & Thompson, R., *Danger Warning! Social Media Sex Trafficking Recruitment is on the Rise since COVID Pandemic*, the DCF & Survive and Thrive Advocacy Center, Feb. 19, 2021, available at Danger Warning! Social Media Sex Trafficking Recruitment is on the Rise since COVID 19 Pandemic (Training Video) (usf.edu) (last visited Feb. 2, 2022) (hereinafter cited as ".

[12] Withers, M., Social Media Platforms Help Promote Human Trafficking, How Sex Trafficking is Bolstered by Social Media, and What to Do about It, Nov. 22, 2019, available at Social Media Platforms Help Promote Human Trafficking | Psychology Today (last visited Feb. 2, 2022) (hereinafter cited as "Psychology Today Article").

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] 2020 National Hotline Annual Report.

[17] 2020 National Human Trafficking Hotline Report for Florida.

Statewide Council on Human Trafficking

The Statewide Council on Human Trafficking (Council), established within the Department of Legal Affairs (DLA), is tasked with:

- Developing recommendations for human trafficking victim programs and services, including certification criteria for safe houses and foster homes.
- Making recommendations for apprehending and prosecuting traffickers.
- Annually holding a statewide policy summit.
- Working with the Department of Children and Families (DCF) to create and maintain an inventory of human trafficking programs and services in each county.
- Developing policy recommendations that advance the duties of the council and further the efforts to combat human trafficking in Florida.[18]

Membership on the Council includes:

- The Attorney General, or a designee, serving as chair.
- The Secretary of the DCF, or a designee, serving as vice chair.
- The State Surgeon General, or a designee.
- The Secretary of the Agency for Health Care Administration, or a designee.
- The executive director of the Department of Law Enforcement (FDLE), or a designee.
- The Secretary of the Department of Juvenile Justice, or a designee.
- The Commissioner of Education, or a designee.
- One member of the Senate appointed by the President of the Senate.
- One member of the House of Representatives appointed by the Speaker of the House of Representatives.
- An elected sheriff appointed by the Attorney General.
- An elected state attorney appointed by the Attorney General.
- Two members appointed by the Governor, and two members appointed by the Attorney General, who have professional experience to assist the Council in the development of care and treatment options for human trafficking victims.[19]

Direct-Support Organizations

A direct-support organization (DSO) is a non-profit organization authorized by statute to carry out specific tasks in support of a public entity or public cause. The function and purpose of a DSO is detailed in its enacting statute and the contract with the agency the DSO was created to support.[20]

In 2014, the Legislature created s. 20.058, F.S., establishing transparency and reporting requirements for DSOs.[21] Each DSO is required to submit, by August 1 of each year, specified

[18] Section 16.617, F.S.
[19] *Id*.
[20] Some examples of other DSOs may be found in ss. 14.29(9)(a), 267.1732, and 258.015(1), F.S. *See also* Rules of the Florida Auditor General, *Audits of Certain Nonprofit Organizations* (effective June 30, 2021), Rule 10.720(1)(b) and (d), available at https://flauditor.gov/pages/pdf_files/10_700.pdf (last visited Feb. 2, 2022).
[21] Chapter 14-96, s. 3, L.O.F.

information to the agency it was created to support.[22] A contract between an agency and a DSO must be contingent upon the DSO submitting the required information to the agency and posting the information on the agency's website. The contract must include a provision for ending operations and returning state-issued funds if the authorizing statute is repealed, the contract is terminated, or the organization is dissolved. If a DSO fails to submit the required information to the agency for two consecutive years, the agency head must terminate its contract with the DSO.[23] By August 15 of each year, the agency must report to the Governor, President of the Senate, Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability the information submitted by each DSO, along with the agency's recommendation and supporting rationale to continue, terminate, or modify the agency's association with the DSO.[24] Any law creating or authorizing a DSO must provide that the authorization is repealed on October 1 of the fifth year after enactment, unless reviewed and reenacted by the Legislature.[25]

DSO Supporting the Council – Florida Alliance to End Human Trafficking

In 2019, the Legislature required the DLA to establish a DSO, the Florida Alliance to End Human Trafficking (FAEHT), to provide assistance, funding, and support to the Council, and to assist in the fulfillment of the Council's purposes.[26] The DSO met for the first time in August 2019,[27] and it is statutorily required to be:

- A Florida not for profit corporation, incorporated under ch. 617, F.S., and approved by the Secretary of State;
- Organized and operated exclusively to solicit funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer, in its own name, property and funds; and make expenditures in support of the purposes specified under s. 16.618, F.S.; and
- Certified by the DLA, after review, to be operating in a manner consistent with its purposes and in the best interests of the state.[28]

The FAEHT's board of directors must be thirteen members, including:

- Two members appointed by the executive director of the FDLE, both of whom must have experience and knowledge in the area of human trafficking.
- Three members appointed by the Attorney General, one of whom must be a human trafficking survivor and one of whom must be a mental health expert.
- Four members appointed by the President of the Senate.
- Four members appointed by the Speaker of the House of Representatives.[29]

The FAEHT is authorized to contract with Florida Forensic Institute for Research, Security, and Tactics (FIRST) to develop required training. The contract with FIRST must provide that the

[22] Section 20.058(1), F.S.
[23] Section 20.058(4), F.S.
[24] Section 20.058(3), F.S.
[25] Section 20.058(5), F.S.
[26] Ch. 2019-152, L.O.F., codified as s. 16.618, F.S.
[27] Office of the Attorney General, *Statewide Council on Human Trafficking*, available at http://myfloridalegal.com/pages.nsf/main/8aea5858b1253d0d85257d34005afa72 (last visited Feb. 2, 2022).
[28] Section 16.618(1), F.S.
[29] Section 16.618(3), F.S.

DSO may terminate the contract if FIRST fails to meet its obligations under s. 16.618(4), F.S. In addition, if FIRST ceases to exist, or if the contract between the FAEHT and FIRST is terminated, DLA must contract with another organization to develop the required training and information.[30]

FIRST, which is managed by the Pasco County Sheriff's Office, is designed to train public safety leaders.[31] Section 16.618(4), F.S., requires FIRST to develop training focused on detecting human trafficking, best practices for reporting human trafficking, and the interventions and treatment for human trafficking survivors. In developing the training, FIRST must consult with law enforcement agencies, human trafficking survivors, industry representatives, tourism representatives, and other interested parties and conduct research to determine the reduction in recidivism attributable to the education of the harms of human trafficking for first-time offenders.[32] The training has been developed and can currently be accessed online.[33]

Firesafety Inspectors

In Florida, a firesafety inspector is a person who holds a current and valid Fire Safety Inspector Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services (DFS) under s. 633.216, F.S., and who is officially assigned the duties of conducting firesafety inspections of buildings and facilities on a recurring or regular basis on behalf of Florida or any county, municipality, or special district with fire safety responsibilities.[34]

Subject to a person meeting minimum qualifications, the Division of State Fire Marshal, Bureau of Firefighter Standards and Training issues certifications for Firesafety Inspector I and Firesafety Inspector II.[35] A Firesafety Inspector Certificate of Compliance is valid for four years from the date of its issuance, and certification renewal is subject to completing an application for renewal and meeting the requirements for renewal as established or adopted by the DFS rule or under ch. 633, F.S., which must include completion of at least 54 hours of continuing education during the preceding four year period or successfully passing an examination established by the DFS.[36]

Firesafety inspectors are typically responsible for inspections, re-inspections, and change-of-occupancy inspections in both new building construction and existing building construction for a variety of buildings and structures. Other duties may include, but are not limited to, ensuring fire safety equipment is installed and maintained properly and that firefighting, fire protection, and

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[30] Section 16.618(4)(a), F.S.
[31] F1RST, Florida's Forensic Institute for Research, Security, & Tactics, available at https://www.floridafirsttraining.org/#/home (last visited Feb. 1, 2022).
[32] Section 16.618(4)(b), F.S.
[33] Section 16.618(4)(b), F.S. *See also* Florida Alliance to End Human Trafficking, available at https://fateht.vidcert.com/register (last visited Feb. 1, 2022).
[34] Section 633.102(12), F.S.
[35] *See* s. 633.216(2), F.S.; Bureau of Fire Standards and Training, Division of State Fire Marshal, *Firesafety Inspector I Certification* (Jun. 8, 2021), available at https://www.myfloridacfo.com/division/sfm/bfst/Documents/FiresafetyInspectorI.pdf; and Bureau of Fire Standards and Training, Division of State Fire Marshal, *Firesafety Inspector II Certification* (Sept. 26, 2012), available at https://www.myfloridacfo.com/division/sfm/bfst/Documents/FiresafetyInspectorII.pdf (all sites last visited on Feb. 2, 2022).
[36] Section 633.216(4), F.S., and Rules 69A-39.003, 69A-39.005, and 69A-39.009, F.A.C.

all other fire safety requirements are fulfilled in accordance with the Florida Fire Prevention Code, Florida Administrative Codes, county ordinances, and other adopted standards.[37] Due to their unique position of regularly inspecting buildings, firesafety inspectors may be able to detect and report human trafficking if properly trained in recognizing common indicators of human trafficking.

Licensed Foster Care

Foster home placements are intended to provide a temporary, safe place to live until a child can be reunited with his or her family, an adoptive family is identified, or other permanency is achieved. Section 409.175(2)(e), F.S., defines a "family foster home" as a private residence in which children who are unattended by a parent or legal guardian are provided 24-hour care. Such homes include emergency shelter family homes and specialized foster homes for children with special needs. A family foster home does not include an adoptive home which has been approved by the DCF or by a licensed child-placing agency for children placed for adoption.[38]

The recruitment, training, and licensing of foster parents is conducted by 18 community-based care agencies that maintain contracts with the DCF.[39] The total number of children placed in a family foster home must be based on the needs of each child in care; the ability of the foster family to meet the individual needs of each child, including any adoptive or biological children or young adults remaining in foster care living in the home; the amount of safe physical plant space; the ratio of active and appropriate adult supervision; and the background, experience, and skill of the family foster parents.[40] Foster parents are responsible for the care and well-being of the child, including maintaining their health, safety, and best interests and encouraging emotional and developmental growth. Following placement, a foster child should be closely monitored by a case worker, who provides support and additional training related to special needs.[41]

In 2019, Florida moved to a system of foster home licensing that consisted of five distinct levels:
- Level I: Child-Specific Foster Home.
- Level II: Non-Child Specific Foster Home.[42]
- Level III: Safe Foster Home for Victims of Human Trafficking.
- Level IV: Therapeutic Foster Home.

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[37] *See* Orange County Government Fire Rescue Department, *Fire Inspector I Fire Inspector Recruit*, available at https://www.orangecountyfl.net/Portals/0/Library/Employment-Volunteerism/docs/Fire%20Inspector%20I-CERT.pdf; *See also* the Villages Fire Rescue Department, *Currently Recruiting for Fire Inspector*, https://www.myfloridacfo.com/campaigns/firecollege/VillagesInsp.pdf (all sites last visited Feb. 2, 2022).

[38] Section 409.175(2)(e), F.S.

[39] The DCF, *Lead Agency Map*, available at https://www.myflfamilies.com/service-programs/community-based-care/lead-agency-map.shtml. The DCF terminated the contract with Eckerd Connects for Circuit 6 and Family Support Services of North Florida took over on January 1, 2022. Eckerd Connects will carry out its contract until it expires June 30, 2022. WFLA, *DCF, Eckerd Connects ending child welfare services contracts in 3 Tampa Bay counties*, available at https://www.wfla.com/news/local-news/dcf-eckerd-connects-end-child-welfare-services-in-3-tampa-bay-counties/; WUSF Public Media, *Family Support Services of North Florida will fully take over on January 1, 2022, Nov. 30, 2021*, available at https://wusfnews.wusf.usf.edu/health-news-florida/2021-11-29/state-selects-replacement-for-eckerd-connects-to-run-foster-care-in-pinellas-pasco| (all sites last visited Feb. 2, 2022).

[40] Section 409.175(3)(a) and (b), F.S., provides that the DCF may grant a capacity waiver in certain instances.

[41] *See* s. 409.1415(2), F.S., for specific roles and responsibilities of foster parents.

[42] Previously "Traditional" foster homes are now Level II.

- Level V: Medical Foster Home.[43]

Level I: Child-Specific Foster Home

A child specific licensed foster home is a new licensure type designed for relatives and nonrelatives who have an existing relationship with the child for whom they are seeking licensure. When a child is not able to safely remain at home with their parents, a family or like-family member who is willing and able to provide care for the child, is the next best alternative.[44]

Level II: Non-Child Specific Foster Home

A non-child specific licensed foster home is identified when placement with a relative or nonrelative caregiver is not possible. This licensure type is available to individuals in the community who may be interested in fostering.[45]

Level III: Safe Foster Home for Victims of Human Trafficking

Safe foster home means a foster home certified by the DCF to care for sexually exploited children.[46] This level of licensure is for individuals interested in providing a safe and stable environment for victims of human trafficking.[47] Florida law defines "human trafficking" as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining,[48] purchasing, patronizing, procuring, or obtaining[49] another person for the purpose of exploitation of that person.[50] In Florida, any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for labor or services, or commercial sexual activity, commits a crime.[51]

In addition to meeting standard licensing requirements, safe foster homes meet certification requirements which include, in summary:

- Use strength-based and trauma-informed approaches to care;
- Serve exclusively one sex;
- Group child victims of commercial sexual exploitation by age or maturity level;
- Care for child victims of commercial sexual exploitation in a matter that separates those children from children with other needs;

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[43] The DCF, *Levels of Foster Care Licensure*, available at https://www.myflfamilies.com/service-programs/foster-care/levels.shtml (hereinafter cited as "Levels of Foster Care Licensure"); Florida FAPA, *Become a Foster Parent*, available at https://floridafapa.org/become-a-foster-parent/ (all sites last visited Feb. 2, 2022).
[44] *Id*.
[45] *Id*.
[46] Section 409.1678(1), F.S.
[47] Levels of Foster Care Licensure.
[48] Section 787.06(2)(f), F.S., provides "maintain" means, in relation to labor or services, to secure or make possible continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type service. Section 787.06(2)(h), F.S., defines "services" as any act committed at the behest of, under the supervision of, or for the benefit of another, including forced marriage, servitude, or the removal of organs.
[49] Section 787.06(2)(g), F.S., provides "obtain" means, in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or secure performance thereof. Section 787.06(2)(e), F.S., provides "labor" means work of economic or financial value.
[50] Section 787.06(2)(d), F.S.
[51] Section 787.06(3), F.S

- Have awake staff on duty 24 hours a day;
- Provide appropriate security though facility design, hardware, technology, staffing, and sitting; and
- Meet other criteria established by DCF rule.

There are currently 18 children who are placed in a safe foster home.

Level IV: Therapeutic Foster Home

This level of licensure is for caregivers who have received specialized training to care for a wide variety of children and adolescents who may have significant emotional, behavioral, or social needs. As a therapeutic foster parent, individualized care is provided in the home by the foster parent to ensure a child receives the appropriate level of care in the least restrictive setting.[52]

Level V: Medical Foster Home

This licensure type is for caregivers who have received specialized training to provide care for children and adolescents with chronic medical conditions. Medical foster parents enable children from birth through age 20 with medically-complex conditions whose parents are unable to care for them in their own homes, to live and receive care in a foster home rather than in hospitals or other facility settings.[53]

Training Requirements for Foster Placement

Under s. 409.175, F.S., in order to provide improved services to children, the DCF is required to provide or cause to be provided preservice training for prospective foster parents and inservice training for foster parents who are licensed and supervised by the DCF.[54]

Except in limited circumstances,[55] as a condition of licensure, foster parents are required to successfully complete preservice training. The preservice training must be uniform statewide and include, but not be limited to, such areas as:

- Orientation regarding agency purpose, objectives, resources, policies, and services;
- Role of the foster parent as a treatment team member;
- Transition of a child into and out of foster care;
- Management of difficult child behavior that can be intensified by placement, by prior abuse or neglect, and by prior placement disruptions;
- Prevention of placement disruptions;
- Care of children at various developmental levels;
- Effects of foster parenting on the family of the foster parent; and
- Information about and contact information for the local mobile response team as a means for addressing a behavioral health crisis or preventing placement disruption.[56]

[52] *Id*.
[53] *Id*.
[54] Section 409.175(14), F.S.
[55] Rule 65C-45.002, F.A.C. provides that, in limited instances, applicants who have completed a DCF approved preservice training curriculum within the last 5 years or who completed training in another state are exempt from completing certain pre-training requirements.
[56] Section 409.175(14)(b), F.S.

Rule 65C-45.002, F.A.C., provides for additional training topics, including:

- The reasonable and prudent parenting standards, pursuant to ss. 39.4091 and 409.145, F.S., and the balance of normalcy for children in care and their safety;
- Legal rights, roles, responsibilities, and expectations of foster parents;
- The social and emotional development of children and youth;
- Agency policies, services, laws, and regulations;
- Development of life skills for teens in care;
- The caregiver's role in supporting and promoting the educational progress of the child;
- Trauma-informed care, including recognizing the signs, symptoms, and triggers of trauma;
- The Multiethnic Placement Act and the Americans with Disabilities Act; and
- The administration of psychotropic Medication.

In addition, foster parents must receive 24 hours of specialized training in commercial sexual exploitation prior to receiving certification to care for sexually exploited children or young adults,[57] which includes, but is not limited to:

- The needs of child victims of commercial sexual exploitation;
- The effects of trauma and sexual exploitation; and
- How to address those needs using strength-based and trauma-informed approaches.[58]

Specifically, the intensive training on commercially exploited children must include:

- Distinctions between sexual abuse, sexual exploitation, and sexual trafficking;
- Language and sensitivity;
- Pathways to entry into sexual exploitation and sexual trafficking;
- Exploiters;
- Tactics of coercion and control;
- Impact of sexual exploitation;
- Stockholm Syndrome and trauma bonding;
- Identifying victims;
- Meeting the needs of victims;
- Trauma triggers;
- Trauma-informed care;
- Vicarious trauma and self-care strategies;
- Behavior management activities; and
- Intersection of labor trafficking and commercial sexual exploitation.[59]

In consultation with foster parents, each region or lead agency is required to develop a plan for making the completion of the required training as convenient as possible for potential foster parents that includes strategies such as providing training in nontraditional locations and at nontraditional times. The plan must be revised at least annually and must be included in the information provided to each person applying to become a foster parent.[60]

[57] Rule 65C-45.004(2), F.A.C.
[58] Section 409.1678(2)(e), F.S.
[59] Rule 65C-45.004(4), F.A.C.
[60] *Id*.

Before licensure renewal, each foster parent must successfully complete inservice training. Periodic time-limited training courses must be made available for selective use by foster parents. Such inservice training must include subjects affecting the daily living experiences of foster parenting as a foster parent. For a foster parent participating in the required inservice training, the DCF is required to reimburse such parent for travel expenditures and, if both parents in a home are attending training or if the absence of the parent would leave the children without departmentally approved adult supervision, the DCF is required to provide for child care or reimburse the foster parents for child care costs incurred by the parents for children in their care.[61]

Agency Staff

The term "agency" means a residential child-caring agency or child placing agency.[62] A "residential child-caring agency" means that any person, corporation, or agency, public or private, other than the child's parent or legal guardian, that provides staffed 24-hour care for children in facilities maintained for that purpose, regardless of whether operated for profit or whether a fee is charged.[63] A "child-placing agency" means any person, corporation, or agency, public or private, other than the parent or legal guardian of the child or an intermediary acting pursuant to ch. 63, F.S., that receives a child for placement and places or arranges for the placement of a child in a family foster home, residential child-caring agency, or adoptive home.[64]

Training for Agency Staff

Currently, only selected agency staff receives training on human trafficking. Child protective investigators and case managers, and their supervisors, must receive a minimum of six hours of specialized training on human trafficking approved by the DCF prior to accepting cases with children or young adult victims of human trafficking.[65] The specialized training in human trafficking is required to be conducted by a DCF-approved trainer and consist of:

- Three hours of live training pertaining to human trafficking;
- One hour of live training pertaining to Legislative language addressing human trafficking; and
- Two hours of additional live training on specialized topics related to human trafficking of children.

Each year child protective investigators and case managers must receive a minimum of one hour of ongoing training per quarter on human trafficking or related topics in order to continue receiving cases with child or young adult victims of human trafficking.

[61] *Id*.
[62] Section 409.175(2)(a), F.S.
[63] Section 409.175(2)(l), F.S.
[64] Section 409.175(2)(d), F.S.
[65] Rule 65C-43.005, F.A.C.

Any professional administering the Human Trafficking Screening Tool (HTST) must meet the training requirements set forth in Rule 65C-43.005, F.A.C., and must have completed the DCF approved training for the HTST prior to administering the tool.[66]

Similar to foster parents of safe foster homes, staff of safe houses must also complete intensive training.[67]

III. Effect of Proposed Changes:

The bill adds the following duties to the Statewide Council on Human Trafficking (Council) to:

- Assess the frequency and extent to which social media platforms are used to assist, facilitate, or support human trafficking within the state;
- Establish a process to detect such use on a consistent basis; and
- Make recommendations on how to stop, reduce, or prevent social media platforms from being used for such purpose.

The Council must implement a system to achieve these objectives without undue delay to the extent they can be achieved under existing laws.

The bill requires the Florida Alliance to End Human Trafficking (FAEHT) to develop training specifically for firesafety inspectors related to recognizing and reporting human trafficking, and allows for such training to be eligible for the continuing education credits required under s. 633.216(4), F.S., for a firesafety inspector to renew his or her certification.

The bill also amends s. 16.618, F.S., to remove obsolete language which requires FIRST to develop human trafficking training for statewide dissemination no later than October 1, 2019, as such training has been developed and is currently available online. Under the bill, FIRST is still required to make such training available for statewide dissemination.

The bill also amends s. 409.175, F.S., to require foster parents and all agency staff to complete preservice and inservice training related to recognizing, preventing, and reporting human trafficking. The preservice training must cover the following topics, at a minimum:

- Basic information on human trafficking, such as understanding relevant terminology and different types of human trafficking;
- Information on children who are at risk of human trafficking; and
- Actions that may be taken to prevent children from becoming victims of domestic violence.

The bill requires the above-described inservice training to be completed by foster parents before licensure renewal and by agency staff during each full year of employment. The DCF will be required to develop the relevant training materials or outsource to an agency approved trainer.

Section 63.092, F.S., is reenacted for the purpose of incorporating the amendment made to s. 409.175, F.S., by the act.

[66] Rule 65C-45.001, F.A.C.
[67] Section 409.1678(2)(e), F.S.

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:

CS/SB 1436 may have an indeterminate fiscal impact on the DSO by requiring it to develop new training specifically for firesafety inspectors.

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: 16.617, 16.618, and 409.175.

This bill reenacts section 63.092 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Children, Families, and Elder Affairs on February 1, 2022:
The Committee Substitute:

- Modifies the duties of the Council in relation to human trafficking on social media;
- Requires the Council to implement a system to eliminate or prevent social media platforms from being used to assist, facilitate, or support human trafficking to the extent these objectives can be achieved under existing laws;
- Requires the FAEHT to develop the required training for firesafety inspectors, instead of FIRST; and
- Makes a technical change which recognizes that the FIRST has already developed certain training material that is available for dissemination.

B. Amendments:

None.

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

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

586-02600-22 20221436c1

A bill to be entitled

An act relating to human trafficking; amending s. 16.617, F.S.; providing the Statewide Council on Human Trafficking with an additional duty; amending s. 16.618, F.S.; deleting an obsolete provision; requiring the direct support organization of the Statewide Council on Human Trafficking to develop certain training for firesafety inspectors; providing that such training is eligible for continuing education credits; amending s. 409.175, F.S.; requiring foster parents and agency staff to complete preservice and inservice training related to human trafficking; reenacting s. 63.092(3)(e), F.S., relating to reports to the court of intended placement by an adoption entity, to incorporate the amendment made to s. 409.175, F.S., in a reference thereto; providing an effective date.

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

Section 1. Present paragraphs (b) through (e) of subsection (4) of section 16.617, Florida Statutes, are redesignated as paragraphs (c) through (f), respectively, and a new paragraph (b) is added to that subsection, to read:

16.617 Statewide Council on Human Trafficking; creation; membership; duties.—

(4) DUTIES.—The council shall:

(b) Assess the frequency and extent to which social media platforms are used to assist, facilitate, or support human

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trafficking within this state, establish a process to detect such use on a consistent basis, and make recommendations on how to stop, reduce, or prevent social media platforms from being used for such purposes. To the extent that these objectives can be achieved under existing laws, the council must implement a system to do so without undue delay.

Section 2. Paragraph (b) of subsection (4) of section 16.618, Florida Statutes, is amended, and paragraph (f) is added to that subsection, to read:

16.618 Direct-support organization.—

(4)

(b) Recognizing that this state hosts large-scale events, including sporting events, concerts, and cultural events, which generate significant tourism to this state, produce significant economic revenue, and often are conduits for human trafficking, the institute must develop training that is available ~~ready~~ for statewide dissemination ~~by not later than October 1, 2019~~.

1. Training must focus on detecting human trafficking, best practices for reporting human trafficking, and the interventions and treatment for survivors of human trafficking.

2. In developing the training, the institute shall consult with law enforcement agencies, survivors of human trafficking, industry representatives, tourism representatives, and other interested parties. The institute also must conduct research to determine the reduction in recidivism attributable to the education of the harms of human trafficking for first-time offenders.

(f) The direct-support organization shall develop training for firesafety inspectors in the recognition and reporting of

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human trafficking. Such training is eligible for continuing education credit under s. 633.216(4).

Section 3. Paragraph (e) is added to subsection (14) of section 409.175, Florida Statutes, to read:

409.175 Licensure of family foster homes, residential child-caring agencies, and child-placing agencies; public records exemption.—

(14)

(e)1. In addition to any other preservice training required by law, foster parents, as a condition of licensure, and agency staff must successfully complete preservice training related to human trafficking which must be uniform statewide and must include, but need not be limited to:

a. Basic information on human trafficking, such as an understanding of relevant terminology, and the differences between sex trafficking and labor trafficking;

b. Factors and knowledge on identifying children at risk of human trafficking; and

c. Steps that should be taken to prevent at-risk youths from becoming victims of human trafficking.

2. Foster parents, before licensure renewal, and agency staff, during each full year of employment, must complete inservice training related to human trafficking to satisfy the training requirement under subparagraph (5)(b)7.

Section 4. For the purpose of incorporating the amendment made by this act to section 409.175, Florida Statutes, in a reference thereto, paragraph (e) of subsection (3) of section 63.092, Florida Statutes, is reenacted to read:

63.092 Report to the court of intended placement by an

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adoption entity; at-risk placement; preliminary study.—

(3) PRELIMINARY HOME STUDY.—Before placing the minor in the intended adoptive home, a preliminary home study must be performed by a licensed child-placing agency, a child-caring agency registered under s. 409.176, a licensed professional, or an agency described in s. 61.20(2), unless the adoptee is an adult or the petitioner is a stepparent or a relative. If the adoptee is an adult or the petitioner is a stepparent or a relative, a preliminary home study may be required by the court for good cause shown. The department is required to perform the preliminary home study only if there is no licensed child-placing agency, child-caring agency registered under s. 409.176, licensed professional, or agency described in s. 61.20(2), in the county where the prospective adoptive parents reside. The preliminary home study must be made to determine the suitability of the intended adoptive parents and may be completed before identification of a prospective adoptive minor. If the identified prospective adoptive minor is in the custody of the department, a preliminary home study must be completed within 30 days after it is initiated. A favorable preliminary home study is valid for 1 year after the date of its completion. Upon its completion, a signed copy of the home study must be provided to the intended adoptive parents who were the subject of the home study. A minor may not be placed in an intended adoptive home before a favorable preliminary home study is completed unless the adoptive home is also a licensed foster home under s. 409.175. The preliminary home study must include, at a minimum:

(e) Documentation of counseling and education of the intended adoptive parents on adoptive parenting, as determined

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

by the entity conducting the preliminary home study. The training specified in s. 409.175(14) shall only be required for persons who adopt children from the department.

If the preliminary home study is favorable, a minor may be placed in the home pending entry of the judgment of adoption. A minor may not be placed in the home if the preliminary home study is unfavorable. If the preliminary home study is unfavorable, the adoption entity may, within 20 days after receipt of a copy of the written recommendation, petition the court to determine the suitability of the intended adoptive home. A determination as to suitability under this subsection does not act as a presumption of suitability at the final hearing. In determining the suitability of the intended adoptive home, the court must consider the totality of the circumstances in the home. A minor may not be placed in a home in which there resides any person determined by the court to be a sexual predator as defined in s. 775.21 or to have been convicted of an offense listed in s. 63.089(4)(b)2.

Section 5. 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 Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 15, 2022

I respectfully request that **Senate Bill 1436**, relating to Human Trafficking, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Ileana Garcia
Florida Senate, District 37

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

2/28/22
Meeting Date

Appropriations
Committee

1436
Bill Number or Topic

Amendment Barcode (if applicable)

Name Austin Stowers

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Address PL 11 The Capitol
Street

Email austin.stowers@myfloridacfo.com

Tallahassee FL 32399
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
CFO and State Fire Marshal
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

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 Appropriations

BILL:	CS/SB 1452
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senators Book and Jones
SUBJECT:	Funding for Sheriffs Providing Child Protective Investigative Services
DATE:	February 25, 2022 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1452 authorizes a sheriff's office who contracts with the Department of Children and Families (DCF) to carry forward documented unexpended state funds from one fiscal year to the next, but the cumulative amount carried forward is capped at eight percent of the total contract amount or grant agreement amount. Any unexpended state funds in excess of the eight percent cap and all unexpended federal funds must be returned to the DCF.

The funds carried forward:

- May not be used to create increased recurring future obligations;
- May not be used for any type of program or service that is not currently authorized by the existing contract or grant agreement with the DCF; and
- May be retained through a contract or grant agreement renewal and any new procurements as long as the same sheriff's office is retained by the DCF.

All unexpended funds at the expiration of the contract or grant agreement must be returned to the DCF.

The bill is expected to have an insignificant negative fiscal impact on state expenditures. See Section V. Fiscal Impact Statement.

The bill takes effect on July 1, 2022.

II. Present Situation:

Current law requires any person who knows or suspects that a child has been abused, abandoned, or neglected to report such knowledge or suspicion to the Florida central abuse hotline (hotline).[1] A child protective investigation begins if the hotline determines the allegations meet the statutory definition of abuse,[2] abandonment,[3] or neglect.[4] A child protective investigator (CPI) investigates the situation either immediately, or within 24 hours after the report is received, depending on the nature of the allegation.[5]

Between October 1, 2020 and September 31, 2021, a total of 168,582 child protective investigations were conducted and 99.5 percent of these investigations were commenced within 24 hours of receiving the abuse report.[6] Of the investigations closed within the same period, a total of 240,694 alleged victims were seen with over 93 percent seen within 24 hours of the hotline intake decision date and time.[7]

After conducting an investigation, if the child protective investigator determines that the child is in need of protection and supervision that necessitates removal, the investigator may initiate formal proceedings to remove the child from his or her home. When the DCF removes a child from the home, a series of dependency court proceedings must occur before a child may be adjudicated dependent.[8]

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[1] Section 39.201(1), F.S.

[2] Section 39.01(2), F.S. The term "abuse" means any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan towards successful reunification or met the conditions for return of the children into the home. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

[3] Section 39.01(1), F.S. The term "abandoned" or "abandonment" means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both.

[4] Sections 39.01(50) and 39.201(2)(a), F.S. "Neglect" occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering necessary services.

[5] Section 39.101(2), F.S.

[6] The DCF, *Office of Child Welfare Dashboard*, January 10, 2022, available at Child Welfare - Florida Department of Children and Families (myflfamilies.com) (last visited Jan. 21, 2022).

[7] *Id.*

[8] *See* s. 39.01(14), F.S., for the definition of "child who is found to be dependent".

Child Protective Investigators (CPIs)

The DCF employs CPIs who must meet minimum qualifications, including, but not limited to, a bachelor's degree, and certification and training requirements.[9] A CPI has certain responsibilities, including, in part:

- Conducting investigations relating to allegations of abuse, abandonment, and/or special conditions for children;
- Working closely with law enforcement;
- Collecting information through observation and interviews with certain persons, including the children and parents;
- Engaging families to understand the family dynamics;
- Assessing danger threats, child vulnerabilities and caregiver protective capacities;
- Developing present and/or impending danger plans;
- Managing and modifying safety plans as necessary during the investigation;
- Arranging emergency placement for any child that cannot safely remain in the home;
- Notifying the state attorney, law enforcement, child protection team and other required individuals as appropriate;
- Providing written present and impending danger assessments;
- Completing Risk Assessment on families investigated and explaining risk score to family;
- Conducting staffing's required for families with risk scores that are High and Very High Risk;
- Providing families with services linkages to agency and community resources;
- Conducting initial/ongoing child present and impending danger assessments; and
- Developing with the family a signed Present Danger Plan and a signed safety plan.[10]

CPIs are required to work nights and weekends to perform their responsibilities and timely complete their assigned investigations.[11]

Contracts with Sheriffs' Offices

Following a pilot program with the Manatee County Sheriff's Office, the DCF contracted with the sheriffs of Pasco County, Manatee County, Broward County, and Pinellas County to provide all child protective investigation services in their respective counties beginning in fiscal year 1999-2000.[12] The following year, the DCF was authorized to enter into grant agreements with sheriffs of other counties to perform child protective investigations in those counties.[13]

The sheriffs of other counties who enter into an agreement with the DCF must:

- Adopt the child welfare model that is used by CPIs who are employed by the DCF;[14]

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[9] The DCF, *Child Protective Investigator*, available at Child Protective Investigator, Employment Opportunities - Florida Department of Children and Families (myflfamilies.com) (last visited Jan. 21, 2022).
[10] *Id.*
[11] *Id.*
[12] Section 39.3065(3)(a), F.S.
[13] *Id.*
[14] *Id.*

- Operate in accordance with the performance standards and outcome measures required for protective investigations that are conducted by the DCF;[15]
- Operate in compliance with federal performance standards and metrics[16] that are imposed by federal law, regulation, or funding requirements;
- Operate in accordance with the same child welfare practice model principals used by, and the same state performance standards and metrics that are imposed on, child protective investigators employed by the DCF.[17]

Each CPI who is employed by the sheriff must complete the same mandatory training that is required of CPIs who are employed by the DCF.[18]

The DCF and all contracted sheriffs, or his or her designee, must meet at least quarterly to collaborate on federal and state quality assurance and quality improvement initiatives.[19] The DCF must conduct an annual performance evaluation of all sheriffs providing services pursuant to a grant agreement.[20] Current law sets out criteria and standards that must be applied when the DCF is conducting the annual evaluations.[21]

Sheriff Funding for CPI Contracts

Funds for providing child protective investigations must be identified in the annual appropriations made to the DCF, and the DCF must award grants for the full amount of the appropriations to the sheriffs' offices. The DCF is allowed to make advance payments to the sheriffs for conducting child protective investigations. Funds provided to sheriffs' offices for investigations may not be integrated into the sheriffs' regular budgets, and must be maintained separately from all other records. The sheriffs' offices must be reported to the DCF as set out in the grant agreement.[22]

The sheriffs' offices total contact amount for child protective investigative services is $57.7 million[23] and eight percent of that total is $4.6 million. Over the past three years the sheriffs' offices have on average returned $1.1 million per year to the DCF.

There is no provision under current law which allows sheriffs' offices to carry forward any unexpended funds. Below is a table that summarizes the amounts of unexpended funds each sheriffs' office returned to the DCF in the past three years.

[15] Section 39.3065(3)(b)1., F.S. The DCF is required to comply with child protection and child welfare outcomes, such as children are first and foremost protected from abuse and neglect; children are safely maintained in their homes, if possible and appropriate; services are provided to protect children and prevent removal from their home; and children have permanency and stability in their living arrangements.
[16] Examples of some of the metrics are noted above, such as commencing the investigation and seeing the alleged victim within 24 hours.
[17] Section 39.3065(3)(b), F.S.
[18] *Id.*
[19] Section 39.3065(3)(d), F.S.
[20] Section 39.3062(3)(e), F.S.
[21] *Id.*
[22] Section 39.3065(3)(c), F.S.
[23] Chapter 2021-36, Laws of Fla. (SB 2500), Specific Appropriation 311.

UNEXPENDED FUNDS RETURNED BY SHERIFFS' OFFICES

Sheriff	CPI Services	Regular Training	Title IV-E Training	Vehicle usage/ Mileage reimbursement/ Miscellaneous	Total
FISCAL YEAR 2020-21					
Broward	$937,741	$1,605	$92,596	-	$1,031,942
Hillsborough	$133,905	$350	$18,495	-	$152,750
Manatee	-	-	-	-	-
Pasco	$3,928	-	-	$17,811	$21,739
Pinellas	-	-	-	-	-
Seminole	-	-	-	-	-
Walton	-	-	-	-	-
FY 2020-21 Total	**$1,075,574**	**$1,955**	**$111,091**	**$17,811**	**$1,206,431**
FISCAL YEAR 2019-20					
Broward	$355,796	$353	$1,608	-	$357,757
Hillsborough	$230,501	$4,688	$68,124	$13,352	$316,665
Manatee	-	-	-	-	-
Pasco	$3,100	-	-	$14,675	$17,775
Pinellas	-	-	-	-	-
Seminole	-	-	$16,238	-	$16,238
Walton	-	$16,725	($692)	-	$16,033
FY 2019-20 Total	**$589,397**	**$21,766**	**$85,278**	**$28,027**	**$724,468**
FISCAL YEAR 2018-19					
Broward	$844,566	-	$13,478	-	$858,044
Hillsborough	$139,025	-	$231,375	$928	$371,328
Manatee	-	-	-	-	-
Pasco	-	-	-	$15,091	$15,091
Pinellas	-	-	$82,489	-	$82,489
Seminole	-	-	$62,974	-	$62,974
Walton	-	$7,734	$17,333	-	$25,067
FY 2018-19 Total	**$983,591**	**$7,734**	**$407,649**	**$16,019**	**$1,414,993**

Community-Based Care Lead Agency Funding

Community-based care lead agencies (lead agencies) are responsible for providing services to children who have been abused, neglected or abandoned and are involved in Florida's child welfare system.[24] Section 409.990, F.S., provides for the funding of these lead agencies to perform such duties and, in part, authorizes a lead agency to carry forward unexpended state

[24] *See* the DCF, *Community-Based Care*, available at Community Based Care - Florida Department of Children and Families (myflfamilies.com) (last visited January 23, 2022).

funds from one fiscal year to the next, but the cumulative amount carried forward must not exceed eight percent of the total contract with the DCF. Any excess funds must be returned to the DCF.[25]

The funds that are carried forward may not be used to increase recurring future obligations, and may not be used for any program or services that are not authorized under the contract with the DCF. Expenditures of funds carried forward must be separately reported to the DCF. Any funds at the end of a contract period must be returned, but funds carried forward may be retained through any contract renewal provided the same lead agency is contracted with the DCF.[26]

III. Effect of Proposed Changes:

The bill provides that a sheriff who is contracted with the DCF to provide child protective services may carry forward documented, unexpended state funds from one fiscal year to the next. However, the cumulative amount carried forward may not exceed eight percent of each sheriff's office total contract or grant agreement amount. Any unexpended state funds in excess of that amount and all federal funds must be returned to the DCF.

The funds that are carried forward may not be used to create increased recurring future obligations or for any program or service that is not currently authorized by the existing contract or grant agreement with the DCF. The funds carried forward must be separately reported to the DCF. Funds carried forward may be retained through a contract or grant agreement renewal and any new procurements as long as the same sheriff's office is retained by the DCF. All unexpended funds at the expiration of the contract or grant agreement must be returned to the DCF.

The bill takes effect on July 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, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[25] Section 409.990(5), F.S.
[26] *Id*.

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/SB 1452 allows the sheriffs' offices that contract with the DCF for the provision of child protective investigations to carry forward documented, unexpended funds from one fiscal year to the next. However, the bill caps the amount of carry forward at eight percent of the sheriff's annual contract amount. Any unexpended funds in excess of eight percent must be returned to the DCF. Currently, the sheriffs' offices are required to return all unexpended funds to the DCF. The ability to retain a portion of the unexpended funds may affect the DCF's reversions to the General Revenue Fund. The sheriffs' offices contacts for fiscal year 2021-2022 total $57.7 million[27] and eight percent of that total is $4.6 million. Over the past three years, the sheriffs' offices have on average returned $1.1 million per year to the DCF.

	Annual Contract Amount	8% of Annual Contract Amount	3-Year Average Reversion
Broward	$15,201,864	$1,216,149	$749,248
Hillsborough	$13,738,700	$1,099,096	$280,248
Manatee	$4,855,360	$388,429	$0
Pasco	$6,466,825	$517,346	$18,202
Pinellas	$11,915,854	$953,268	$27,496
Seminole	$4,633,803	$370,704	$26,404
Walton	$860,607	$68,849	$13,700
Total	**$57,673,013**	**$4,613,841**	**$1,115,297**

[27] Chapter 2021-36, Laws of Fla. (SB 2500), Specific Appropriation 311.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 39.3065 of the Florida Statutes.

IX. Additional Information:

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

CS by Children, Families, and Elder Affairs on January 25, 2022:
The committee substitute:

- Clarifies the amount that may be carried forward applies to each sheriff's office, instead of the cumulative amount of all sheriffs' offices;
- Specifies that the amount of unexpended funds that may be carried forward must be state funds; and
- Clarifies that the unexpended funds which must be returned to the DCF are any unexpended state funds in excess of 8 percent of each sheriff's office total contract or grant agreement amount, and all unexpended federal funds.

B. Amendments:

None.

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

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

586-02287-22 20221452c1

A bill to be entitled

An act relating to funding for sheriffs providing child protective investigative services; amending s. 39.3065, F.S.; authorizing sheriffs who provide child protective investigative services to carry forward a certain percentage of unexpended state funds each fiscal year; requiring certain funds to be returned to the Department of Children and Families; prohibiting funds carried forward from being used in certain ways; requiring that certain expenditures be reported to the department; authorizing unexpended funds to be retained through contract or grant agreement renewals under certain circumstances; providing an effective date.

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

Section 1. Paragraph (c) of subsection (3) of section 39.3065, Florida Statutes, is amended to read:

39.3065 Sheriffs of certain counties to provide child protective investigative services; procedures; funding.—

(3)

(c) Funds for providing child protective investigations must be identified in the annual appropriation made to the department, which shall award grants for the full amount identified to the respective sheriffs' offices. Notwithstanding ss. 216.181(16)(b) and 216.351, the department may advance payments to the sheriffs for child protective investigations. A sheriff may carry forward documented unexpended state funds from

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

586-02287-22 20221452c1

one fiscal year to the next. However, the cumulative amount of state funds carried forward may not exceed 8 percent of each sheriff's office total contract amount or grant agreement amount. Any unexpended state funds in excess of that amount and all unexpended federal funds must be returned to the department. The funds carried forward may not be used to create increased recurring future obligations or for any type of program or service that is not currently authorized by the existing contract or grant agreement with the department. The expenditure of funds carried forward must be separately reported to the department. Funds carried forward may be retained through a contract or grant agreement renewal and any new procurements as long as the same sheriff's office is retained by the department. All unexpended funds at the expiration of the contract or grant agreement must be returned to the department. Funds for the child protective investigations may not be integrated into the sheriffs' regular budgets. Budgetary data and other data relating to the performance of child protective investigations must be maintained separately from all other records of the sheriffs' offices and reported to the department as specified in the grant agreement.

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 Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 22, 2022

I respectfully request that **Senate Bill 1452**, relating to Funding for the Sheriffs Providing Child Protective Investigative Services, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

In the mid-1990s, a sheriff office pilot program was started to assume child protective services. Over the course of the next twenty-two years, funding for these positions has not increased properly to support the increase in cost of living, health insurance, and other benefits. This has resulted in CPI vacancies not being filled. Additionally, an accounting error resulted in an inability for leftover funds from previous years to "rollover" into subsequent years.

This important bill would close that accounting error, and insure that our children are being protected by the brave men and women of our Sheriff's child protective teams.

Thank you for your consideration.

Minority Leader Lauren Book
Florida Senate, District 32

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 Appropriations

BILL:	PCS/CS/SB 1474 (422484)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Commerce and Tourism Committee; and Senator Bradley
SUBJECT:	Online Training for Private Security Officers
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Fav/CS**
2.	Blizzard	Betta	AEG	**Recommend: Fav/CS**
3.	Blizzard	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1474 will allow Class "D" unarmed Security Officers and Class "G" Statewide Firearm applicants to obtain the training required as a licensing qualification through either in-person or online instruction. The online instruction must be provided through the secure website of a licensed school or training facility, or a Class "K" licensee that has a physical location in Florida. Additionally, the online training course must:

- Include security questions to ensure that the applicant is actively using the computer and is following along with the online training;
- Establish a minimum amount of time that each applicant must spend on each screen;
- Include randomized test questions; and
- Maintain a digital attendance log and keep other required records.

The Department of Agriculture and Consumer Services (department) regulates private security officers and their related licenses. The bill requires the department to adopt rules, including those to establish the online courses' content, web security protocols, and course completion reporting requirements.

The bill may have an insignificant negative fiscal impact on state expenditures that can be absorbed within existing resources.

The bill takes effect on July 1, 2022.

II. Present Situation:

The Division of Licensing within the department is responsible for investigating and issuing licenses to conduct private security services and related licenses, including Class "D" unarmed Security Officer and Class "G" Statewide Firearm licensees.[1]

Class "D" Security Officer Licensees

A Class "D" security officer is an individual who advertises for, or performs: bodyguard services, personal or property protection; theft and loss prevention; armored car staffing; or transportation of prisoners.[2] A Class "D" licensee is not permitted to carry a firearm during the course of his or her duties unless he or she also has a supplemental Class "G" license.[3]

Law enforcement officers engaged in their official duties or off-duty security activities that have been approved by appropriate superiors are not considered security officers.[4] Additionally, unarmed security officers who are employed by, and perform their work entirely on the premises of either their employer's business, a church or denominational organization, or a church cemetery are not required to be licensed as a security officer under ch. 493, F.S.[5]

As of December 31, 2021, there are 124,996 active Class "D" security officer licensees.[6]

A Class "D" applicant for licensure must complete 40 hours of professional training at a Class "DS" Security Officer School or Training Facility licensed by the department.[7]

Class "G" Statewide Firearm License

A Class "G" license is a supplemental license that permits specific licensees to carry a firearm during the course of their licensed, employment-related activity. A Class "G" license is available only to individuals who currently hold one of the following licenses:

- Private investigator (Class "C");
- Private investigator intern (Class "CC");
- Security officer (Class "D");
- Private investigative or security agency manager (Class "M");
- Private investigative agency manager (Class "MA"); or
- Security agency manager (Class "MB").[8]

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[1] Chapter 493, F.S.
[2] Section 493.6101(19), F.S.; *see also*, Florida Department of Agriculture and Consumer Services (DACS), *Private Security Licenses*, https://www.fdacs.gov/Business-Services/Private-Security-Licenses (last visited Jan. 31, 2022).
[3] Section 493.6101(9), F.S.
[4] Section 493.6102(1), F.S.
[5] Section 493.6102(4), (13), F.S.
[6] DACS, Division of Licensing, *Number of Licensees by Type* (Dec. 31, 2021), https://www.fdacs.gov/content/download/82618/file/Number_of_Licensees_By_Type.pdf (last visited Jan. 31, 2022).
[7] Section 493.6303, F.S.
[8] Section 493.6115(2), F.S.

The "Class G" license must be renewed every two years.

Application and Training Requirements for Class "G" Licensees

An initial applicant for a Class "G" license must complete firearm training, which must include at least 28 hours of range and classroom training (range training must be limited to no more than eight hours) that is administered by a Class "K" licensee.[9] An applicant who was discharged within the last 12 months from service as a military officer, and has completed specific military courses is deemed to have completed a substantially similar training, and is exempt from the 28 hours of range and classroom training required for a Class "G" initial license.

Class "G" licensees must annually complete four hours of firearms requalification training for each caliber of firearm that he or she carries in the course of his or her duties.[10]

Class "DS" Security Officer Schools and Training Facilities

Schools and training facilities that provide required training services for Class "D" Security Officer license applicants must submit an application for licensure, which includes:[11]

- The name and address of the school or training facility;
- The street address of the place where training will be conducted; and
- A copy of the curriculum and final exam to be administered, in accordance with the requirements set forth by the department.[12]

The department establishes the general content and number of hours of each subject area to be taught by the licensed schools and training facilities.[13] Currently, administrative rule states that students shall "remain under the supervision of a licensed instructor during all classes and under constant supervision during examination."[14]

A Class "DS" Security Officer School or training facility must maintain the following records for at least two years:[15]

- A schedule of the date, time, location, and instructor of each class session;
- A separate file for each course which establishes that the minimum course standards were met, the course materials used, and an original of each final exam;
- An attendance log for each class session;
- A copy of any certificate, diploma, or other record given to each student; and
- A separate file on each approved instructor, which includes his or her qualifications.

An individual who teaches or instructs at a class "DS" security officer school or training facility must have a Class "DI," Security Officer School or Training Facility Instructor license.[16]

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[9] Section 493.6105(5), F.S. *See also* Fla. Admin. Code R. 5N-1.132(1)(a).
[10] Section 493.6113(3)(b), F.S.
[11] Section 493.6304, F.S. and Fla. Admin. Code R. 5N-1.134.
[12] Fla. Admin. Code R. 5N-1.132(4)(c).
[13] Section 493.6303(4)(a), F.S.
[14] Fla. Admin. Code R. 5N-1.138(4).
[15] Fla. Admin. Code R. 5N-1.140(5).
[16] *See* Fla. Admin. Code R. 5N-1.138(1), for qualifications for Class "DI" license.

Class "K" Firearm Instructor Licensees

Class "K" Firearm Instructor Licensees provide classroom or range instruction to applicants for a Class "G" license.[17] Class "K" instructors are not currently required to be affiliated with a school or training facility. Administrative rules currently state that firearms instructors may not rely solely on the use of audio/video material in his or her course, but may use such material as an instructional aide when teaching the classroom portion of the course.[18]

Class "K" Firearm Instructors must provide a standardized Certificate of Firearms Proficiency for Statewide Firearm License to each student who successfully completes the 28-hour firearms proficiency course.[19] The Class "K" licensee must retain a copy of each certificate he or she provides, and is subject to penalty for the falsification of any such certificate.[20]

COVID-19 Emergency Orders

The Commissioner of Agriculture and Consumer Services issued Emergency Order 2020-004 to "provide flexibility for workers" during the COVID-19 pandemic[21] by allowing Class "D" security guards to complete their initial 40 hours of training via live video conference.[22]

Emergency Order 2020-10, issued on April 24, 2020, suspends the provisions of s. 493.6105(5), F.S., and its related rules to allow Class "G" license applicants to conduct their class room training by live video conference.[23]

These emergency orders expired on June 26, 2021.[24]

III. Effect of Proposed Changes:

The bill allows Class "G" statewide firearm licensees and Class "D" security officer licensees to obtain required training via online or in-person instruction.

Class "G" Statewide Firearm Licenses

Section 1 amends s. 493.6105, F.S., to allow a Class "G" applicant to complete the 20-hour classroom training portion of the required firearm training either by in-person instruction, or via live instruction through a secure website, with no more than eight hours consisting of in-person

[17] Sections 493.6101(14) and 493.6115(7), F.S.
[18] Fla. Admin. Code R. 5N-1.132(4)(c).
[19] Fla. Admin. Code R. 5N-1.132(4)(d).
[20] Fla. Admin. Code R. 5N-1.132(4)(d)-(e).
[21] Press Release, DACS, *Commissioner Nikki Fried Issues Emergency Orders & Rules During COVID-19* (Mar. 31, 2020), https://www.fdacs.gov/News-Events/Press-Releases/2020-Press-Releases/Commissioner-Nikki-Fried-Issues-Emergency-Orders-Rules-During-COVID-19 (last visited Jan. 31, 2022).
[22] DACS, *Emergency Order 2020-004* (Mar. 20, 2020), https://www.fdacs.gov/content/download/91595/file/2020-03-20-EmergencyOrder2020-004%28DOLCOVID-19%29.pdf (last visited Jan. 31, 2022).
[23] DACS, *Emergency Order 2020-010* (Apr. 24, 2020), https://www.fdacs.gov/content/download/94238/file/2020-04-24-DOL-Class-G-Emergency-Order_2020-010.pdf (last visited Jan. 31, 2022).
[24] DACS, *Commissioner of Agriculture Emergency Orders Regarding COVID-19*, https://www.fdacs.gov/Divisions-Offices/Licensing (last visited Jan. 31, 2022).

range training which must include safe handling and storage of firearms. The training must be taught and administered by a Class "K" firearms instructor who verifies the identity and attendance of the applicant.

The bill requires Class "G" applicants to submit a training certificate to the department upon completion of the training. Additionally, the Class "K" licensee who provided the training must submit results directly to the department's Division of Licensing and provide a copy of the training results to the trainee.

The bill requires the department to engage in rulemaking to establish the general content, number of hours of each subject area to be taught, the method of delivery and the security protocols for online training and testing, the reporting requirements for verification of successful completion of training, and regulation of Class "K" licensees in relation to their provision of in-person or online training.

Class "D" Security Officer Licenses

Section 3 amends s. 493.6303, F.S., to allow Class "D" applicants to complete their 40-hour training requirement either by in-person instruction, or through live, online instruction presented through a secure website of a licensed school or training facility.

The bill requires an applicant to submit his or her verification of successful completion of training to the department, and requires the training facility or instructor to submit proof of completion of training for the applicant to the department. Additionally, the training facility or instructor must provide an electronic copy of proof of training for each applicant to the department, and must also provide a copy of the training results to the applicant.

The bill requires the department to engage in rulemaking to establish the general content, number of hours of each subject area to be taught, the method of delivery and the security protocols for online training and testing, the reporting requirements for verification of successful completion of training, and any other rule necessary to regulate schools or training facilities that provide in-person or online training. The bill further allows the department to adopt additional rules needed to regulate schools or training facilities that provide in-person or online training.

Class "DS" Security Officer Schools and Training Facilities

Section 2 creates s. 493.6132, F.S., to specify requirements for schools or training facilities and Class "K" licensees that provide online training courses allowed under the bill. Specifically, a licensed school or training facility and Class "K" licensee must maintain a physical location in Florida. The Class "K" licensee must conduct his or her live online training in Florida, but a licensed school or training facility may conduct the live online classes from any location. The providers of live online training must also maintain, and make available to the department, records of:

- All training sessions;
- The name and license number of the instructor who is present online with the students while the students receive instruction; and
- Proof of compliance with all security protocols at the school, facility, or place of business.

The online training course must:

- Require its instructor to verify the applicant's identity, attendance, and successful completion of training;
- Include security questions to ensure that the applicant is actively using the computer or mobile device and is following along with the training;
- Establish a minimum amount of time that each applicant must spend on each screen before moving on to the next;
- Include randomized test questions;
- Include a digital record of the applicant's attendance log and any other components required by the department;
- Allow instructing via recording where an applicant is absent during a portion of the live online class, as limited by departmental rule; and
- Permit the department to access each online course for the purpose of auditing, monitoring, and inspection.

The applicant may not use more than one device at a time to log into the online training course.

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:

This bill will require the department to undergo rulemaking to revise Rule 5N-1.132 of the Florida Administrative Code and update related policies and procedures. The bill has an indeterminate, yet insignificant fiscal impact on the department's Division of Licensing Trust Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 493.6105 and 493.6303.

This bill creates section 493.6132 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.)

PCS (422484) by Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government):
The committee substitute provides that the eight hour in-person range training requirement for a Class "G" license shall include instruction on the safe handling and storage of firearms.

CS by Commerce and Tourism on January 31, 2022:
The committee substitute:

- Allows Class "G" applicants to complete training through a secure website that is not affiliated with or operated by a licensed school or training facility (but is administered by a Class "K" licensee), and requires the department to adopt rules that regulate a Class "K" licensee's teaching of such an online course;
- Implements similar reporting requirements for Class "G" and Class "D" applicants who complete their training online, specifically requiring both the applicant and instructor to submit training results to the department, and requiring the instructor to provide a hard copy of the certificate to the applicant;

- Requires an online training course to keep a record of the (1) applicant's attendance log, (2) instructor who taught each session; (3) compliance with security protocols; and (4) any other required documentation established by departmental rule;
- Requires a person or entity that provides online training pursuant to the bill to provide live access to the department for auditing or inspection purposes; and
- Replaces a reference to the Department of Business and Professional Regulation with a reference to the Department of Agriculture and Consumer Services.

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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576-03288-22

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Agriculture, Environment, and General Government)

A bill to be entitled

An act relating to online training for private security officers; amending ss. 493.6105 and 493.6303, F.S.; providing that certain required training criteria for Class "G" and Class "D" licenses, respectively, may be conducted online; providing requirements for such training; requiring the Department of Agriculture and Consumer Services to establish certain criteria and rules for the regulation of certain entities that provide online training; providing reporting requirements upon completion of the training; creating s. 493.6132, F.S.; providing requirements for online training courses for a Class "D" license; requiring entities offering online training to provide the Division of Licensing with live access to each course; authorizing such entities to deliver online instruction using recordings under certain circumstances; providing an effective date.

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

Section 1. Subsection (5) of section 493.6105, Florida Statutes, is amended to read:

493.6105 Initial application for license.—

(5) In addition to the requirements outlined in subsection

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(3), an applicant for a Class "G" license must satisfy minimum training criteria for firearms established by rule of the department, including ~~which training criteria includes~~, but ~~is~~ not limited to, 28 hours of range and classroom training conducted by in-person instruction or live online instruction through a secure website, provided that the applicant's identity, attendance, and successful completion of training are verified by the instructor. As part of his or her application, the applicant must submit a training certificate to the department upon completion of the training. Training must be taught and administered by one or more ~~a~~ Class "K" licensees. ~~licensee; however,~~ No more than 20 hours of such training may be conducted in an online classroom, and 8 hours of such training shall consist of in-person range training that includes training on the safe handling and storage of firearms. Consistent with s. 493.6115, the department shall by rule establish the general content and the number of hours of each subject area to be taught, the method of delivery and the security protocols for online training and testing, the reporting requirements for verification of successful completion of training, and any other rules necessary for the regulation of Class "K" licensees providing in-person or online training. Upon completion of the training, the instructor must submit results directly to the Division of Licensing in a manner prescribed by the department. The instructor must also provide a copy of the training results to the applicant who completed the training. The department may waive the foregoing firearms training requirement if:

(a) The applicant provides proof that he or she is currently certified as a law enforcement officer or correctional


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officer pursuant to the requirements of the Criminal Justice Standards and Training Commission or has successfully completed the training required for certification within the last 12 months.

(b) The applicant provides proof that he or she is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency.

(c) The applicant submits a valid firearm certificate listed ~~among those specified~~ in paragraph (6)(a).

Section 2. Section 493.6132, Florida Statutes, is created to read:

493.6132 Online training courses.—

(1) An online training course for a Class "D" license must be conducted live and by a licensed school or training facility that maintains a physical location in this state.

(2) A Class "K" licensed firearms instructor conducting an online training course must maintain a physical location in this state and must conduct online classes live at a location in this state.

(3) An applicant may only be logged into the online training course from one device at a time.

(4) The online training course must include, at a minimum, all of the following:

(a) Security questions to ensure that the applicant is actively using the computer or mobile device and is following along with the online training.

(b) A minimum amount of time that each applicant must spend on each screen before moving on to the next screen.


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(c) Randomized test questions.

(d) A digital record of the applicant's attendance log along with any components required by department rule.

(5) A licensed school or training facility, or a Class "K" licensee conducting an online course, must maintain records of all training sessions, including the name and license number of the instructor who is present online with the students while the students are receiving instruction, and proof of compliance with all security protocols at the school, facility, or place of business in this state. The records required under this subsection must be made accessible to the department's investigators upon request.

(6) A licensed school or training facility, or a Class "K" licensee conducting an online course must provide the Division of Licensing with live access to each course for the purposes of auditing, monitoring, or inspection as deemed necessary by the division.

(7) If an applicant is absent during a portion of a live online class, a licensed school or training facility, or a Class "K" licensee conducting an online course, may deliver instruction in part using recordings, as limited by department rule.

Section 3. Paragraph (a) of subsection (4) of section 493.6303, Florida Statutes, is amended to read:

493.6303 License requirements.—In addition to the license requirements set forth elsewhere in this chapter, each individual or agency must comply with the following additional requirements:

(4)(a) An applicant for a Class "D" license must submit

proof of successful completion of a minimum of 40 hours of professional training at a school or training facility licensed by the department. The training may be conducted by in-person instruction or online instruction presented live through a secure website of the licensed school or training facility, provided that the applicant's identity, attendance, and successful completion of training are verified by the instructor. As part of his or her application, the applicant must submit the completed training certificate to the department upon completion of the training. The department shall by rule and in accordance with s. 493.6103 establish the general content and number of hours of each subject area to be taught, the method of delivery and the security protocols for online training and testing, the reporting requirements for verification of successful completion of training, and any other rules necessary for the regulation of schools or training facilities providing in-person or online training. Upon completion of such training, the training facility or the instructor must submit proof of completion of training for each applicant to the department electronically in a manner prescribed by the department. The training facility or the instructor must also provide a copy of the training results to the applicant who completed the training.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1474
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Commerce and Tourism Committee; and Senator Bradley
SUBJECT:	Online Training for Private Security Officers
DATE:	March 2, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Fav/CS**
2.	Blizzard	Betta	AEG	**Recommend: Fav/CS**
3.	Blizzard	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1474 will allow Class "D" unarmed Security Officers and Class "G" Statewide Firearm applicants to obtain the training required as a licensing qualification through either in-person or online instruction. The online instruction must be provided through the secure website of a licensed school or training facility, or a Class "K" licensee that has a physical location in Florida. Additionally, the online training course must:

- Include security questions to ensure that the applicant is actively using the computer and is following along with the online training;
- Establish a minimum amount of time that each applicant must spend on each screen;
- Include randomized test questions; and
- Maintain a digital attendance log and keep other required records.

The Department of Agriculture and Consumer Services (department) regulates private security officers and their related licenses. The bill requires the department to adopt rules, including those to establish the online courses' content, web security protocols, and course completion reporting requirements.

The bill may have an insignificant negative fiscal impact on state expenditures that can be absorbed within existing resources.

The bill takes effect on July 1, 2022.

II. Present Situation:

The Division of Licensing within the department is responsible for investigating and issuing licenses to conduct private security services and related licenses, including Class "D" unarmed Security Officer and Class "G" Statewide Firearm licensees.[1]

Class "D" Security Officer Licensees

A Class "D" security officer is an individual who advertises for, or performs: bodyguard services, personal or property protection; theft and loss prevention; armored car staffing; or transportation of prisoners.[2] A Class "D" licensee is not permitted to carry a firearm during the course of his or her duties unless he or she also has a supplemental Class "G" license.[3]

Law enforcement officers engaged in their official duties or off-duty security activities that have been approved by appropriate superiors are not considered security officers.[4] Additionally, unarmed security officers who are employed by, and perform their work entirely on the premises of either their employer's business, a church or denominational organization, or a church cemetery are not required to be licensed as a security officer under ch. 493, F.S.[5]

As of December 31, 2021, there are 124,996 active Class "D" security officer licensees.[6]

A Class "D" applicant for licensure must complete 40 hours of professional training at a Class "DS" Security Officer School or Training Facility licensed by the department.[7]

Class "G" Statewide Firearm License

A Class "G" license is a supplemental license that permits specific licensees to carry a firearm during the course of their licensed, employment-related activity. A Class "G" license is available only to individuals who currently hold one of the following licenses:

- Private investigator (Class "C");
- Private investigator intern (Class "CC");
- Security officer (Class "D");
- Private investigative or security agency manager (Class "M");
- Private investigative agency manager (Class "MA"); or
- Security agency manager (Class "MB").[8]

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[1] Chapter 493, F.S.
[2] Section 493.6101(19), F.S.; *see also*, Florida Department of Agriculture and Consumer Services (DACS), *Private Security Licenses*, https://www.fdacs.gov/Business-Services/Private-Security-Licenses (last visited Jan. 31, 2022).
[3] Section 493.6101(9), F.S.
[4] Section 493.6102(1), F.S.
[5] Section 493.6102(4), (13), F.S.
[6] DACS, Division of Licensing, *Number of Licensees by Type* (Dec. 31, 2021), https://www.fdacs.gov/content/download/82618/file/Number_of_Licensees_By_Type.pdf (last visited Jan. 31, 2022).
[7] Section 493.6303, F.S.
[8] Section 493.6115(2), F.S.

The "Class G" license must be renewed every two years.

Application and Training Requirements for Class "G" Licensees

An initial applicant for a Class "G" license must complete firearm training, which must include at least 28 hours of range and classroom training (range training must be limited to no more than eight hours) that is administered by a Class "K" licensee.[9] An applicant who was discharged within the last 12 months from service as a military officer, and has completed specific military courses is deemed to have completed a substantially similar training, and is exempt from the 28 hours of range and classroom training required for a Class "G" initial license.

Class "G" licensees must annually complete four hours of firearms requalification training for each caliber of firearm that he or she carries in the course of his or her duties.[10]

Class "DS" Security Officer Schools and Training Facilities

Schools and training facilities that provide required training services for Class "D" Security Officer license applicants must submit an application for licensure, which includes:[11]

- The name and address of the school or training facility;
- The street address of the place where training will be conducted; and
- A copy of the curriculum and final exam to be administered, in accordance with the requirements set forth by the department.[12]

The department establishes the general content and number of hours of each subject area to be taught by the licensed schools and training facilities.[13] Currently, administrative rule states that students shall "remain under the supervision of a licensed instructor during all classes and under constant supervision during examination."[14]

A Class "DS" Security Officer School or training facility must maintain the following records for at least two years:[15]

- A schedule of the date, time, location, and instructor of each class session;
- A separate file for each course which establishes that the minimum course standards were met, the course materials used, and an original of each final exam;
- An attendance log for each class session;
- A copy of any certificate, diploma, or other record given to each student; and
- A separate file on each approved instructor, which includes his or her qualifications.

An individual who teaches or instructs at a class "DS" security officer school or training facility must have a Class "DI," Security Officer School or Training Facility Instructor license.[16]

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[9] Section 493.6105(5), F.S. *See also* Fla. Admin. Code R. 5N-1.132(1)(a).
[10] Section 493.6113(3)(b), F.S.
[11] Section 493.6304, F.S. and Fla. Admin. Code R. 5N-1.134.
[12] Fla. Admin. Code R. 5N-1.132(4)(c).
[13] Section 493.6303(4)(a), F.S.
[14] Fla. Admin. Code R. 5N-1.138(4).
[15] Fla. Admin. Code R. 5N-1.140(5).
[16] *See* Fla. Admin. Code R. 5N-1.138(1), for qualifications for Class "DI" license.

Class "K" Firearm Instructor Licensees

Class "K" Firearm Instructor Licensees provide classroom or range instruction to applicants for a Class "G" license.[17] Class "K" instructors are not currently required to be affiliated with a school or training facility. Administrative rules currently state that firearms instructors may not rely solely on the use of audio/video material in his or her course, but may use such material as an instructional aide when teaching the classroom portion of the course.[18]

Class "K" Firearm Instructors must provide a standardized Certificate of Firearms Proficiency for Statewide Firearm License to each student who successfully completes the 28-hour firearms proficiency course.[19] The Class "K" licensee must retain a copy of each certificate he or she provides, and is subject to penalty for the falsification of any such certificate.[20]

COVID-19 Emergency Orders

The Commissioner of Agriculture and Consumer Services issued Emergency Order 2020-004 to "provide flexibility for workers" during the COVID-19 pandemic[21] by allowing Class "D" security guards to complete their initial 40 hours of training via live video conference.[22]

Emergency Order 2020-10, issued on April 24, 2020, suspends the provisions of s. 493.6105(5), F.S., and its related rules to allow Class "G" license applicants to conduct their class room training by live video conference.[23]

These emergency orders expired on June 26, 2021.[24]

III. Effect of Proposed Changes:

The bill allows Class "G" statewide firearm licensees and Class "D" security officer licensees to obtain required training via online or in-person instruction.

Class "G" Statewide Firearm Licenses

Section 1 amends s. 493.6105, F.S., to allow a Class "G" applicant to complete the 20-hour classroom training portion of the required firearm training either by in-person instruction, or via live instruction through a secure website, with no more than eight hours consisting of in-person

[17] Sections 493.6101(14) and 493.6115(7), F.S.
[18] Fla. Admin. Code R. 5N-1.132(4)(c).
[19] Fla. Admin. Code R. 5N-1.132(4)(d).
[20] Fla. Admin. Code R. 5N-1.132(4)(d)-(e).
[21] Press Release, DACS, *Commissioner Nikki Fried Issues Emergency Orders & Rules During COVID-19* (Mar. 31, 2020), https://www.fdacs.gov/News-Events/Press-Releases/2020-Press-Releases/Commissioner-Nikki-Fried-Issues-Emergency-Orders-Rules-During-COVID-19 (last visited Jan. 31, 2022).
[22] DACS, *Emergency Order 2020-004* (Mar. 20, 2020), https://www.fdacs.gov/content/download/91595/file/2020-03-20-EmergencyOrder2020-004%28DOLCOVID-19%29.pdf (last visited Jan. 31, 2022).
[23] DACS, *Emergency Order 2020-010* (Apr. 24, 2020), https://www.fdacs.gov/content/download/94238/file/2020-04-24-DOL-Class-G-Emergency-Order_2020-010.pdf (last visited Jan. 31, 2022).
[24] DACS, *Commissioner of Agriculture Emergency Orders Regarding COVID-19*, https://www.fdacs.gov/Divisions-Offices/Licensing (last visited Jan. 31, 2022).

range training which must include safe handling and storage of firearms. The training must be taught and administered by a Class "K" firearms instructor who verifies the identity and attendance of the applicant.

The bill requires Class "G" applicants to submit a training certificate to the department upon completion of the training. Additionally, the Class "K" licensee who provided the training must submit results directly to the department's Division of Licensing and provide a copy of the training results to the trainee.

The bill requires the department to engage in rulemaking to establish the general content, number of hours of each subject area to be taught, the method of delivery and the security protocols for online training and testing, the reporting requirements for verification of successful completion of training, and regulation of Class "K" licensees in relation to their provision of in-person or online training.

Class "D" Security Officer Licenses

Section 3 amends s. 493.6303, F.S., to allow Class "D" applicants to complete their 40-hour training requirement either by in-person instruction, or through live, online instruction presented through a secure website of a licensed school or training facility.

The bill requires an applicant to submit his or her verification of successful completion of training to the department, and requires the training facility or instructor to submit proof of completion of training for the applicant to the department. Additionally, the training facility or instructor must provide an electronic copy of proof of training for each applicant to the department, and must also provide a copy of the training results to the applicant.

The bill requires the department to engage in rulemaking to establish the general content, number of hours of each subject area to be taught, the method of delivery and the security protocols for online training and testing, the reporting requirements for verification of successful completion of training, and any other rule necessary to regulate schools or training facilities that provide in-person or online training. The bill further allows the department to adopt additional rules needed to regulate schools or training facilities that provide in-person or online training.

Class "DS" Security Officer Schools and Training Facilities

Section 2 creates s. 493.6132, F.S., to specify requirements for schools or training facilities and Class "K" licensees that provide online training courses allowed under the bill. Specifically, a licensed school or training facility and Class "K" licensee must maintain a physical location in Florida. The Class "K" licensee must conduct his or her live online training in Florida, but a licensed school or training facility may conduct the live online classes from any location. The providers of live online training must also maintain, and make available to the department, records of:

- All training sessions;
- The name and license number of the instructor who is present online with the students while the students receive instruction; and
- Proof of compliance with all security protocols at the school, facility, or place of business.

The online training course must:

- Require its instructor to verify the applicant's identity, attendance, and successful completion of training;
- Include security questions to ensure that the applicant is actively using the computer or mobile device and is following along with the training;
- Establish a minimum amount of time that each applicant must spend on each screen before moving on to the next;
- Include randomized test questions;
- Include a digital record of the applicant's attendance log and any other components required by the department;
- Allow instructing via recording where an applicant is absent during a portion of the live online class, as limited by departmental rule; and
- Permit the department to access each online course for the purpose of auditing, monitoring, and inspection.

The applicant may not use more than one device at a time to log into the online training course.

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:

This bill will require the department to undergo rulemaking to revise Rule 5N-1.132 of the Florida Administrative Code and update related policies and procedures. The bill has an indeterminate, yet insignificant fiscal impact on the department's Division of Licensing Trust Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 493.6105 and 493.6303.

This bill creates section 493.6132 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 Appropriations on February 28, 2022:
The committee substitute provides that the eight hour in-person range training requirement for a Class "G" license shall include instruction on the safe handling and storage of firearms.

CS by Commerce and Tourism on January 31, 2022:
The committee substitute:

- Allows Class "G" applicants to complete training through a secure website that is not affiliated with or operated by a licensed school or training facility (but is administered by a Class "K" licensee), and requires the department to adopt rules that regulate a Class "K" licensee's teaching of such an online course;
- Implements similar reporting requirements for Class "G" and Class "D" applicants who complete their training online, specifically requiring both the applicant and instructor to submit training results to the department, and requiring the instructor to provide a hard copy of the certificate to the applicant;
- Requires an online training course to keep a record of the (1) applicant's attendance log, (2) instructor who taught each session; (3) compliance with security protocols; and (4) any other required documentation established by departmental rule;

- Requires a person or entity that provides online training pursuant to the bill to provide live access to the department for auditing or inspection purposes; and
- Replaces a reference to the Department of Business and Professional Regulation with a reference to the Department of Agriculture and Consumer Services.

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 Commerce and Tourism; and Senator Bradley

577-02512-22 20221474c1

A bill to be entitled

An act relating to online training for private security officers; amending ss. 493.6105 and 493.6303, F.S.; providing that certain required training criteria for Class "G" and Class "D" licenses, respectively, may be conducted online; providing requirements for such online training; requiring the Department of Agriculture and Consumer Services to establish certain criteria and rules for the regulation of certain entities that provide online training; providing reporting requirements upon completion of the training; creating s. 493.6132, F.S.; providing requirements for online training courses for a Class "D" license; requiring entities offering online training to provide the Division of Licensing with live access to each course; authorizing such entities to deliver online instruction using recordings under certain circumstances; providing an effective date.

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

Section 1. Subsection (5) of section 493.6105, Florida Statutes, is amended to read:

493.6105 Initial application for license.—

(5) In addition to the requirements outlined in subsection (3), an applicant for a Class "G" license must satisfy minimum training criteria for firearms established by rule of the department, including ~~which training criteria includes~~, but ~~is~~

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

577-02512-22 20221474c1

not limited to, 28 hours of range and classroom training conducted by in-person instruction or live online instruction through a secure website, provided that the applicant's identity, attendance, and successful completion of training are verified by the instructor. As part of his or her application, the applicant must submit a training certificate to the department upon completion of the training. Training must be taught and administered by one or more ~~a~~ Class "K" licensees. ~~licensee; however,~~ No more than 20 hours of such training may be conducted in an online classroom, and 8 hours of such training shall consist of in-person range training. Consistent with s. 493.6115, the department shall by rule establish the general content and the number of hours of each subject area to be taught, the method of delivery and the security protocols for online training and testing, the reporting requirements for verification of successful completion of training, and any other rules necessary for the regulation of Class "K" licensees providing in-person or online training. Upon completion of the training, the instructor must submit results directly to the Division of Licensing in a manner prescribed by the department. The instructor must also provide a copy of the training results to the applicant who completed the training. The department may waive the foregoing firearms training requirement if:

(a) The applicant provides proof that he or she is currently certified as a law enforcement officer or correctional officer pursuant to the requirements of the Criminal Justice Standards and Training Commission or has successfully completed the training required for certification within the last 12 months.

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(b) The applicant provides proof that he or she is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency.

(c) The applicant submits a valid firearm certificate listed ~~among those specified~~ in paragraph (6)(a).

Section 2. Section 493.6132, Florida Statutes, is created to read:

493.6132 Online training courses.—

(1) An online training course for a Class "D" license must be conducted live and by a licensed school or training facility that maintains a physical location in this state.

(2) A Class "K" licensed firearms instructor conducting an online training course must maintain a physical location in this state and must conduct online classes live at a location in this state.

(3) An applicant may only be logged into the online training course from one device at a time.

(4) The online training course must include, at a minimum, all of the following:

(a) Security questions to ensure that the applicant is actively using the computer or mobile device and is following along with the online training.

(b) A minimum amount of time that each applicant must spend on each screen before moving on to the next screen.

(c) Randomized test questions.

(d) A digital record of the applicant's attendance log along with any components required by department rule.

(5) A licensed school or training facility, or a Class "K"

licensee conducting an online course, must maintain records of all training sessions, including the name and license number of the instructor who is present online with the students while the students are receiving instruction, and proof of compliance with all security protocols at the school, facility, or place of business in this state. The records required under this subsection must be made accessible to the department's investigators upon request.

(6) A licensed school or training facility, or a Class "K" licensee conducting an online course must provide the Division of Licensing with live access to each course for the purposes of auditing, monitoring, or inspection as deemed necessary by the division.

(7) If an applicant is absent during a portion of a live online class, a licensed school or training facility, or a Class "K" licensee conducting an online course, may deliver instruction in part using recordings, as limited by department rule.

Section 3. Paragraph (a) of subsection (4) of section 493.6303, Florida Statutes, is amended to read:

493.6303 License requirements.—In addition to the license requirements set forth elsewhere in this chapter, each individual or agency must comply with the following additional requirements:

(4)(a) An applicant for a Class "D" license must submit proof of successful completion of a minimum of 40 hours of professional training at a school or training facility licensed by the department. The training may be conducted by in-person instruction or online instruction presented live through a

secure website of the licensed school or training facility, provided that the applicant's identity, attendance, and successful completion of training are verified by the instructor. As part of his or her application, the applicant must submit the completed training certificate to the department upon completion of the training. The department shall by rule and in accordance with s. 493.6103 establish the general content and number of hours of each subject area to be taught, the method of delivery and the security protocols for online training and testing, the reporting requirements for verification of successful completion of training, and any other rules necessary for the regulation of schools or training facilities providing in-person or online training. Upon completion of such training, the training facility or the instructor must submit proof of completion of training for each applicant to the department electronically in a manner prescribed by the department. The training facility or the instructor must also provide a copy of the training results to the applicant who completed the training.

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

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 23, 2022

Senator Kelli Stargel, Chair
Committee on Appropriations
201 Capitol
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Stargel:

I respectfully request that CS/CS/SB 1474 be placed on the agenda of the Appropriations Committee at your earliest convenience. The bill authorizes the use of online instruction for the training of private security guards.

Thank you for your consideration.

Sincerely,

Jennifer Bradley

Jennifer Bradley

cc: Tim Sadberry, Staff Director
Alicia Weiss, 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

28 February 2022

Meeting Date

APPEARANCE RECORD

Deliver both copies of this form to
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1474

Bill Number or Topic

Appropriations

Committee

Amendment Barcode (if applicable)

Name Cynthia Henderson

Phone 8505590855

Address 108 E Jefferson St

Street

Email cyhenderson@Me.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:
FASCO

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

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

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The Florida Senate

APPEARANCE RECORD

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2/28/22
Meeting Date

Approps.
Committee

1474
Bill Number or Topic

Amendment Barcode (if applicable)

Name Amanda Fraser

Phone 850 556 1401

Address
Street

Email

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: G4S security

☐ 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 Appropriations

BILL:	SB 1518
INTRODUCER:	Senator Berman and others
SUBJECT:	Lactation Space
DATE:	February 23, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Limones-Borja	McVaney	GO	**Favorable**
2.	Dale	Harkness	ACJ	**Recommend: Favorable**
3.	Dale	Sadberry	AP	**Favorable**

I. Summary:

SB 1518 requires each county courthouse to provide, by January 1, 2023, at least one dedicated lactation space outside the confines of a restroom for members of the public to express breast milk or breastfeed in private. The bill requires the lactation space be hygienic, shielded from public view, free from intrusion while occupied, and it must contain an electrical outlet.

The bill authorizes the person responsible for the operation of the facility housing each district court of appeal, to use state-appropriated funds or private funding to provide a dedicated lactation space.

The requirements to provide a dedicated lactation space do not apply to a courthouse if the person who is responsible for the operation of the courthouse determines that the courthouse does not contain a lactation space for employees which may be used by the members of the public or new construction would be required to create the lactation space.

The bill contains a legislative finding that the bill fulfills an important state interest.

Each county and the state may incur costs associated with funding a dedicated lactation space.

This bill takes effect July 1, 2022.

II. Present Situation:

Funding Requirements for Court Related Functions

Article V, Section 14 of the State Constitution requires counties to fund the cost of communication services, existing radio systems, existing multi-agency information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the trial

courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions.[1] Counties are not required to fund the state courts system, state attorney's office, public defenders offices, court-appointed counsel or the offices of the clerks of the circuit performing court related functions.[2] Section 29.008, F.S., defines the term "facility" to mean reasonable and necessary buildings, office space, equipment, furnishings, structures, real estate, easements, and related interests in real estate.[3] The county is responsible for the funding of physical modifications and improvements to all facilities in order to comply with the American with Disabilities Act.

Section 29.004, F.S., provides that the construction or lease of facilities, maintenance, utilities, and security for the district courts of appeal and the Supreme Court are funded through state revenues in the General Appropriations Act.[4]

Courthouse Lactation Room Handbook

The Florida Association of Women Lawyers (FAWL) established guidelines to provide accessibility to lactation rooms for women in the legal field. These guidelines are being used across the state by local governments in order to implement lactation rooms for courthouses. The FAWL handbook establishes best practices for implementing lactation rooms, such as room access, room naming, room specifications, amenities, and ways to fund the room. The implementation of these rooms allows access to women jurors, witnesses, and other actors who partake in the legal process.[5]

According to the Florida Bar, 38 percent of Florida attorneys are women,[6] and 39 percent of Florida judges are women.[7] The percentage of women attorneys in the state is expected to rise over the coming years due to women accounting for almost 50 percent of the total number of law school students in Florida.[8]

Breastfeeding in Florida

Florida became one of the first states to pass legislation that supports women breast feeding in any location. Section 383.015, F.S., provides that the breastfeeding of a baby is an important and basic act of nurture which must be encouraged in the interests of maternal and child health and family values. A mother may breastfeed her baby in any location, public or private, regardless of whether the nipple of the mother is uncovered during or incidental to the breastfeeding.[9] Further, any facility providing maternity services such as breastfeeding can be designated as "baby-friendly."

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[1] Section 29.008, F.S.
[2] Fla. Const. art. V, s. 14
[3] Section 29.008(1), F.S.
[4] Section 29.004(4), F.S.
[5] *Id.*
[6] The Florida Bar, *Board Issue Paper – Women in the Law/Gender Bias,* (Feb. 13, 2017), *available at* https://www.floridabar.org/news/resources/issue-04/#IV.%20Facts%20and%20Statistics (last visited January 21, 2022).
[7] *Id.*
[8] *Id.*
[9] Section 383.015, F.S.

Lactation Space in Florida Courthouses

The courthouses that contain a dedicated lactation space include:
- 1st Judicial Circuit Court (Okaloosa County Courthouse);
- 2nd Judicial Circuit Court (Leon County Courthouse);
- 4th Judicial Circuit Court (Duval County Courthouse);
- 5th Judicial Circuit Court (Lake County Courthouse);
- 6th Judicial Circuit Court (St. Petersburg Judicial Building);
- 7th Judicial Circuit Court (St. Johns County Courthouse);
- 8th Judicial Circuit Court (Alachua County Courthouse);
- 9th Judicial Circuit Court (Orange County Courthouse);
- 10th Judicial Circuit Court (Polk County Courthouse);
- 11th Judicial Circuit Courts (including the Coral Gables Courthouse, Dade County Courthouse, Joseph Caleb Center, Lawson E. Courthouse Center, Miami Dade Children's Courthouse, Richard E. Gerstein Justice Building, and the South Dade Justice Center)[10];
- 12th Judicial Circuit Court (Sarasota County Courthouse and Manatee County Judicial Center);
- 13th Judicial Circuit Court (Edgecomb Courthouse);
- 15th Judicial Circuit Court (West Palm Beach Main Courthouse and Delray Beach South County Courthouse);
- 17th Judicial Circuit Court (Broward County Central Courthouse);
- 18th Judicial Circuit Court (Brevard County Courthouse and Seminole County Courthouse);
- 19th Judicial Circuit Court (Martin County Courthouse); and
- 20th Judicial Circuit Court (Lee County Courthouse and Collier County Courthouse).

Counties Designated as Headquarters for District Courts of Appeal

The following is location of the headquarters for each DCA:
- First Appellate District in the Second Judicial Circuit, Tallahassee, Leon County;
- Second Appellate District in the Tenth Judicial Circuit, Lakeland, Polk County;
- Third Appellate District in the Eleventh Judicial Circuit, Miami-Dade County;
- Fourth Appellate District in the Fifteenth Judicial Circuit, Palm Beach County; and
- Fifth Appellate District in the Seventh Judicial Circuit, Daytona Beach, Volusia County.[11]

A DCA may designate other locations within its district as branch headquarters to conduct the business of the court and as the official headquarters of its officers or employees.[12]

Currently, there is only one DCA that has an established space dedicated to lactation within its courthouse.

[10] Florida's Eleventh Judicial Circuit, *Courthouse Amenities – Lactations Rooms, available at* https://www.jud11.flcourts.org/About-the-Court/Courthouse-Amenities/Lactation-Rooms, (last visited January 21, 2022).
[11] Section 35.05, F.S.
[12] *Id.*

III. Effect of Proposed Changes:

Section 1 creates s. 29.24, F.S., to require each county courthouse to provide at least one dedicated lactation space outside the confines of a restroom for members of the public to express breast milk or breastfeed in private by January 1, 2023. The dedicated space must be hygienic, shielded from public view, free from intrusion while occupied, and contain an electrical outlet.

This section authorizes the person responsible for the operation of the facility housing each district court of appeal to use state-appropriated funds or private funding to provide a dedicated lactation space.

This section establishes that the requirements to provide a dedicated lactation space do not apply to a courthouse if the person who is responsible for the operation of the courthouse determines that:

- The courthouse does not contain a lactation space for employees which may be used by the members of the public and the courthouse does not have:
  - A space that could be repurposed as a lactation space open to the public; or
  - A space that could be made private at a reasonable cost using portable materials, contingent upon private funding being made available for those costs.
- New construction would be required to create the lactation space.

Section 2 contains a legislative finding that the bill fulfills an important state interest.

Section 3 provides the bill take effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

> No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: ...the law requiring such expenditure is approved by two-thirds of the membership of each house of the legislature….

Counties will incur costs in complying with the space requirements set forth in the bill. As drafted, the bill contains a finding that the bill fulfills an important state interest.

The mandate requirements do not apply to laws having an insignificant impact which, for Fiscal Year 2021-2022, is forecasted to be $2.2 million.[13,14,15] The fiscal impact of this bill on cities or counties is indeterminate. If costs imposed by the bill do not exceed $2.2 million, then the mandate requirements (legislative finding and 2/3 vote) do not apply and the bill will be binding on the counties.

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:

If a county courthouse or a District Court of Appeal (DCA) uses private funding to provide a dedicated lactation space, the private entity providing the funds will incur a negative fiscal impact.

C. Government Sector Impact:

Each county will incur costs associated with providing a dedicated lactation space in its county courthouses. Also, the state may incur costs associated with providing a dedicated lactation space within the DCA courthouses.

[13] FLA. CONST. art. VII, s. 18(d).
[14] 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 January 21, 2022).
[15] Based on the Florida Demographic Estimating Conference's November 3, 2020, population forecast for 2021 of 21,830,364. The conference packet is *available at:* http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf (last visited January 21, 2022).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 29.24, 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 Berman

31-00056-22 20221518__

A bill to be entitled

An act relating to lactation space; creating s. 29.24, F.S.; requiring at least one lactation space to be provided in each county courthouse; providing requirements for the lactation space; authorizing the use of state or private funds to provide lactation space in appellate courthouses; providing exceptions; declaring that this act fulfills an important state interest; providing an effective date.

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

Section 1. Section 29.24, Florida Statutes, is created to read:

29.24 Lactation space in courthouses.—

(1) Except as otherwise provided in this section, by January 1, 2023, each county courthouse must provide at least one dedicated lactation space outside of the confines of a restroom for members of the public to express breast milk or breastfeed in private. The space must be hygienic, be shielded from public view, be free from intrusion while occupied, and contain an electrical outlet.

(2) The person responsible for the operation of the facility housing each district court of appeal may use state-appropriated funds or private funding to provide a lactation space as set forth in subsection (1).

(3) The requirements of subsection (1) do not apply to a courthouse if the person who is responsible for the operation of the courthouse determines that:

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31-00056-22 20221518__

(a) The courthouse does not contain a lactation space for employees which may be used by the members of the public and the courthouse does not have:

1. A space that could be repurposed as a lactation space open to the public; or

2. A space that could be made private at a reasonable cost using portable materials, contingent upon private funding being made available for those costs.

(b) New construction would be required to create the lactation space.

Section 2. The Legislature finds that this act fulfills an important state interest.

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 Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 16, 2022

I respectfully request that **Senate Bill #1518**, relating to Lactation Space, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Lori Berman
Florida Senate, District 31

cc: Senator Aaron Bean, Vice Chair
Tim Sadberry, Staff Director

File signed original with committee office

S-020 (03/2004)

The Florida Senate

APPEARANCE RECORD

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2/28/2022	SB 1518
Meeting Date	Bill Number or Topic
Appropriations	
Committee	Amendment Barcode (if applicable)

Name Rob Johnson **Phone** (850) 491-1430

Address 110 E Jefferson St **Email** Rob@themayernickgroup.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:**

March of Dimes

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

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

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The Florida Senate

APPEARANCE RECORD

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2/28/22
Meeting Date

APPROPRIATIONS
Committee

1518
Bill Number or Topic

Amendment Barcode (if applicable)

Name AARON WAYT "WAIT"
FL ASSN OF CRIM DEFENSE LAWYERS

Phone (407) 435-3194

Address
Street

Email

City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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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 Appropriations

BILL:	PCS/CS/SB 1556 (773696)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Environment and Natural Resources Committee; and Senator Gruters
SUBJECT:	Golf Course Best Management Practices Certification
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carroll	Rogers	EN	**Fav/CS**
2.	Reagan	Betta	AEG	**Recommend: Fav/CS**
3.	Reagan	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1556 provides for golf course best management practices (BMPs) certification. The bill directs the turfgrass science program at the University of Florida Institute of Food and Agricultural Sciences (UF/IFAS) in coordination with the Department of Environmental Protection (DEP) to administer a golf course BMPs certification to ensure compliance with fertilizer BMPs.

The bill requires the UF/IFAS, in cooperation with the DEP, to provide training and testing certification programs. The bill requires an applicant for certification to submit a copy of the training certificate. Recertification is available when the certificate expires, for which the bill requires eight classroom hours of continuing education.

The bill exempts a person certified in golf course BMPs from additional local testing and local ordinances relating to water and fertilizer use restrictions, unless a state of emergency is declared.

The UF/IFAS may incur costs in administering training and testing certification programs and continuing education in golf course best management practices.

II. Present Situation:

Water Quality and Nutrients

Phosphorus and nitrogen are naturally present in water and are essential nutrients for the healthy growth of plant and animal life.[1] The correct balance of both nutrients is necessary for a healthy ecosystem; however, excessive nitrogen and phosphorus can cause significant water quality problems.[2]

Phosphorus and nitrogen are derived from natural and human-made sources.[3] Human-made sources include sewage disposal systems (wastewater treatment facilities and septic systems), overflows of storm and sanitary sewers (untreated sewage), agricultural production and irrigation practices, and stormwater runoff.[4]

Excessive nutrient loads may result in harmful algal blooms, nuisance aquatic weeds, and the alteration of the natural community of plants and animals.[5] Dense, harmful algal blooms can also cause human health problems, fish kills, problems for water treatment plants, and impairment of the aesthetics and taste of waters. Growth of nuisance aquatic weeds tends to increase in nutrient-enriched waters, which can impact recreational activities.[6]

Best Management Practices

BMPs are designed to protect water resources from nonpoint source pollution,[7] occurring from operations like agriculture, golf courses, forestry, and stormwater management.[8] BMPs are practical measures that can reduce the effects of fertilizer, nutrients, and water use on the environment and otherwise manage the landscape to further protect water resources.[9]

Producers of nonpoint source pollution included in a basin management action plan (BMAP)[10] must comply with the established pollutant reductions by either implementing the appropriate BMPs or by conducting water quality monitoring.[11] A nonpoint source discharger may be subject

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[1] U.S. Environmental Protection Agency (EPA), *The Issue*, https://www.epa.gov/nutrientpollution/issue (last visited Jan. 19, 2022).
[2] *Id.*
[3] *Id.*
[4] EPA, *Sources and Solutions*, https://www.epa.gov/nutrientpollution/sources-and-solutions (last visited Jan. 19, 2022).
[5] EPA, *The Issue*, https://www.epa.gov/nutrientpollution/issue (last visited Jan. 19, 2022).
[6] *Id.*
[7] Point sources are "any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged." Nonpoint sources are not point sources. Fla. Admin. Code R. 62-620.200(37).
[8] University of Florida Institute of Food and Agricultural Sciences (UF/IFAS), *Best Management Practices*, https://hort.ifas.ufl.edu/yourfloridalawn/bmps.shtml (last visited Jan. 20, 2022); Department of Environmental Protection (DEP), *NPDES Stormwater Program*, https://floridadep.gov/Water/Stormwater (last visited Jan. 19, 2022).
[9] UF/IFAS, *Agricultural Best Management Practices*, https://bmp.ifas.ufl.edu/about-bmps/ (last visited Jan. 20, 2022).
[10] Basin Management Action Plans (BMAPs) are one of the primary mechanisms the DEP uses to address the entire pollution load for a watershed, including point and nonpoint discharges. Section 403.067(7), F.S.
[11] Section 403.067(7)(b)2.g., F.S. For example, BMPs for agriculture include activities such as managing irrigation water to minimize losses, limiting the use of fertilizers, and waste management.

to enforcement action by the DEP or a water management district based on a failure to implement these requirements.[12]

Golf Course BMPs for Fertilizer Application

The Florida golf course industry is the largest of any state.[13] As of 2019, there were 1,306 golf courses and 986 golf facilities in Florida.[14] Site placement and management of golf courses can create environmental harms, but BMPs can help mitigate harms or provide environmental benefits.[15]

Golf course BMPs attempt to curb excessive and unnecessary fertilization to prevent water pollution due to nutrient runoff or leaching from saturated or compacted soils.[16] BMPs for nutrient applications focus on maximizing plant uptake and include suggestions to:

- Follow UF/IFAS nitrogen (N) application rates;
- Apply nutrients when turfgrass is actively growing;
- Apply slow-release N fertilizers at the appropriate time of year, taking into consideration the release rate of the chosen material;
- Take into account that putting greens, tees, and landing areas require more nutrition than other areas like fairways and roughs;
- Exercise caution when applying nutrients during turfgrass establishment, because they are more susceptible to leaching and runoff at that time;
- During establishment, use appropriate rates and products to minimize N loss due to increased water applications, increased nutrients rates, and reduced root mass;
- Be aware of the pros and cons of different nutrient spreaders;
- Calibrate the chosen nutrient spreader properly;
- Properly store, load, and clean up fertilizer to reduce environmental risk;
- Avoid applying fertilizer to soils that are at or near saturation, or when the National Weather Service has issued a flood, tropical storm, or hurricane warning, or if heavy rains are forecast in the next 24 hours; and
- When using fertigation,[17] ensure that irrigation heads are properly aligned and adjusted to ensure no nutrient-loaded irrigation water is being applied to lakes and wetlands.[18]

Golf course BMPs also focus on other areas of landscape management to protect environmental resources, including:

- Planning, design, and construction;
- Irrigation;
- Cultural practices;
- Lake and aquatic management;
- Turf pest and pesticide management;

[12] Section 403.067(7)(b)2.h., F.S.
[13] *BMPs for the Enhancement of Env. Quality on FL Golf Courses*, 14 (Sept. 2021), *available at* http://flgolfbmp.com/view-the-bmp-guide (last visited Jan. 19, 2022).
[14] *Id.*
[15] *Id.* at 15.
[16] *Id.* at 144.
[17] Fertigation is fertilizer application through an irrigation system. *Id.* at 152.
[18] *Id.* at 153.

- Maintenance operations;
- Pollinator protection; and
- Energy conservation.[19]

Green Industries BMP Certification

The UF/IFAS currently offers the Green Industries BMPs program, which teaches environmentally safe landscaping practices that protect water quality and natural resources.[20] The program was created for people working in lawn-care and landscape maintenance. The program includes golf course employees among those who benefit from green industries BMPs training.[21]

Local Government Ordinances Relating to Golf Courses BMPs

Local governments often require fertilizer on golf courses to be used in accordance with the *Best Management Practices for the Enhancement of Environmental Quality on Florida Golf Courses*; or they may provide fertilizer restrictions exemptions for golf courses that follow golf course BMPs.[22] Local governments may also regulate fertilizer use in addition to requiring or encouraging golf course BMPs.[23]

In addition to fertilizer, local government may also require or encourage golf course irrigation practices to align with golf course BMPs.[24] Local governments may also regulate water use separately from golf course BMPs.[25]

III. Effect of Proposed Changes:

Section 1 creates s. 403.9339, F.S., relating to golf course BMPs certification. The bill requires the UF/IFAS in coordination with the DEP to administer a certification for golf course BMPs as a means of documenting and ensuring compliance with BMPs for fertilizer application to golf courses.

The bill requires the UF/IFAS, in cooperation with the DEP, to:

- Provide training and testing programs in golf course BMPs and may issue certificates demonstrating satisfactory completion of the training; and

[19] *Id.* at 3-4.
[20] UF/IFAS, *Green Industries BMPs*, https://gibmp.ifas.ufl.edu/ (last visited Jan. 20, 2022); UF/IFAS, *FL Friendly Landscaping Program*, https://ffl.ifas.ufl.edu/ffl-and-you/gi-bmp-program/ (last visited Jan. 20, 2022).
[21] *Id.*
[22] *See, e.g.*, Boca Raton Ord. No. 17-265 (fertilizer content and application rates), Alachua County Ord. No. 77-12 (groundwater protection), Collier County Ord. No. 54-33 (exemptions), and Jacksonville Ord. No. 366-610 (exemptions).
[23] *See, e.g.*, Miami-Dade Ord. No. 18C-8 (requirements related to golf courses, athletic fields, specialized turf, and parks); and Palm Beach County Ord. Nos. 11-407 (fertilizer free zones), 11-408 (fertilizer content and application rates), and 11-409 (fertilizer application practices).
[24] *See, e.g.*, Miami-Dade Ord. No. 18C-8 (requirements related to golf courses, athletic fields, specialized turf, and parks) and Alachua County Ord. No. 77-64 (exemptions),
[25] *See, e.g.*, Palm Beach County Ord. No. 27-180 (approved uses of reclaimed water) and Boca Raton Ord. No. 17-57 (landscape irrigation restrictions)

- Approve training and testing programs in golf course BMPs in the future that are equivalent to or more comprehensive that the original training and testing programs. The programs must be reviewed and reapproved by the UF/IFAS if significant changes are made.

The bill requires an applicant to submit a copy of the training certificate to the UF/IFAS to obtain a golf course BMPs certification.

The bill provides that a golf course BMPs certification expires four years after the date of issuance. Upon expiration or after a grace period of not more than 30 days after the expiration date, a recertification may be reissued. The bill specifies that before applying for recertification, an applicant must complete eight classroom hours of acceptable continuing education, including at least two hours addressing fertilizer BMPs. The bill requires an applicant to submit proof of completion of the eight classroom hours of continuing education to the UF/IFAS to obtain golf course BMPs recertification.

The bill provides that a person certified in golf course BMPs is exempt from:
- Additional local training; and
- Local ordinances relating to water and fertilizer use blackout periods or restrictions, unless a state of emergency is declared.

The bill provides that these provisions do not exempt a certified person from complying with the rules and requirements for basin management action plans (BMAP) if the golf course is located within a BMAP.

The bill provides that the UF/IFAS may provide the certification status of persons certified in golf course BMPs to local and state governmental entities. The bill encourages the UF/IFAS to create a registry of persons certified in golf course BMPs on its website.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The UF/IFAS may incur costs in administering training and testing certification programs and continuing education in golf course best management practices.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 403.9339 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.)

PCS (773696) by Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government):
The committee substitute:

- Directs the turfgrass science program at UF/IFAS to administer the certification for golf course best management practices (BMPs), instead of the DEP. The turfgrass science program will coordinate with the DEP.
- Provides a certified person may be exempt from additional local training and local ordinances relating to water and fertilizer use blackout periods or restrictions, unless a state of emergency is declared. The amendment adds that the certified person must continue to coordinate with the local government to ensure that they adhere to the comprehensive BMPs for that specific community.
- Clarifies that this section does not exempt a certified person from complying with the rules and requirements for basin management action plans when applicable.

- Deletes the rulemaking authorization.

CS by Environment and Natural Resources on January 24, 2022:
Removes the golf course best management practices certification and recertification fees.

B. Amendments:

None.

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

773696

576-03286-22

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Agriculture, Environment, and General Government)

A bill to be entitled

An act relating to golf course best management practices certification; creating s. 403.9339, F.S.; requiring the turfgrass science program at the University of Florida Institute of Food and Agricultural Sciences, in coordination and cooperation with the Department of Environmental Protection, to administer a certification for golf course best management practices and provide and approve certification training and testing programs; providing certification and recertification requirements; providing that such certification exempts persons from certain local training and local ordinance regulations; providing construction; authorizing the turfgrass science program to share certification information with local and state governmental entities; encouraging the turfgrass science program to create an online certification registry; providing an effective date.

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

Section 1. Section 403.9339, Florida Statutes, is created to read:

403.9339 Golf course best management practices certification.—

773696

576-03286-22

(1) To provide a means of documenting and ensuring compliance with best management practices for fertilizer application to golf courses, the turfgrass science program at the University of Florida Institute of Food and Agricultural Sciences, in coordination with the department, shall administer a certification for golf course best management practices.

(2) The turfgrass science program, in cooperation with the department, shall:

(a) Provide training and testing programs in golf course best management practices and may issue certificates demonstrating satisfactory completion of the training.

(b) Approve training and testing programs in golf course best management practices that are equivalent to or more comprehensive than the programs provided by the turfgrass science program under paragraph (a). Such programs must be reviewed and reapproved by the turfgrass science program if significant changes are made.

(3) To obtain a golf course best management practices certification, an applicant must submit to the turfgrass science program a copy of the training certificate issued under subsection (2).

(4) A golf course best management practices certification issued under this section expires 4 years after the date of issuance. Upon expiration of the certification, or after a grace period of not more than 30 days after the expiration date, a recertification may be issued.

(5) To obtain a golf course best management practices recertification, an applicant must submit to the turfgrass science program proof of having completed 8 classroom hours of

continuing education, of which at least 2 hours must address fertilizer best management practices.

(6) A person certified under this section is exempt from:

(a) Additional local training.

(b) Local ordinances relating to water and fertilizer use blackout periods or restrictions, unless a state of emergency is declared. The certified person must continue to coordinate with the local government to ensure that he or she adheres to the comprehensive best management practices for that specific community.

(7) This section does not exempt a person certified under this section from complying with the rules and requirements for basin management action plans set forth in s. 403.067(7) if the golf course is located in an area within a basin management action plan.

(8)(a) The turfgrass science program may provide the certification status of persons certified under this section to local and state governmental entities.

(b) The turfgrass science program is encouraged to create a registry of persons certified under this section on its website.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1556
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Environment and Natural Resources Committee; and Senator Gruters
SUBJECT:	Golf Course Best Management Practices Certification
DATE:	March 2, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carroll	Rogers	EN	**Fav/CS**
2.	Reagan	Betta	AEG	**Recommend: Fav/CS**
3.	Reagan	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1556 provides for golf course best management practices (BMPs) certification. The bill directs the turfgrass science program at the University of Florida Institute of Food and Agricultural Sciences (UF/IFAS) in coordination with the Department of Environmental Protection (DEP) to administer a golf course BMPs certification to ensure compliance with fertilizer BMPs.

The bill requires the UF/IFAS, in cooperation with the DEP, to provide training and testing certification programs. The bill requires an applicant for certification to submit a copy of the training certificate. Recertification is available when the certificate expires, for which the bill requires eight classroom hours of continuing education.

The bill exempts a person certified in golf course BMPs from additional local testing and local ordinances relating to water and fertilizer use restrictions, unless a state of emergency is declared.

The UF/IFAS may incur costs in administering training and testing certification programs and continuing education in golf course best management practices.

II. Present Situation:

Water Quality and Nutrients

Phosphorus and nitrogen are naturally present in water and are essential nutrients for the healthy growth of plant and animal life.[1] The correct balance of both nutrients is necessary for a healthy ecosystem; however, excessive nitrogen and phosphorus can cause significant water quality problems.[2]

Phosphorus and nitrogen are derived from natural and human-made sources.[3] Human-made sources include sewage disposal systems (wastewater treatment facilities and septic systems), overflows of storm and sanitary sewers (untreated sewage), agricultural production and irrigation practices, and stormwater runoff.[4]

Excessive nutrient loads may result in harmful algal blooms, nuisance aquatic weeds, and the alteration of the natural community of plants and animals.[5] Dense, harmful algal blooms can also cause human health problems, fish kills, problems for water treatment plants, and impairment of the aesthetics and taste of waters. Growth of nuisance aquatic weeds tends to increase in nutrient-enriched waters, which can impact recreational activities.[6]

Best Management Practices

BMPs are designed to protect water resources from nonpoint source pollution,[7] occurring from operations like agriculture, golf courses, forestry, and stormwater management.[8] BMPs are practical measures that can reduce the effects of fertilizer, nutrients, and water use on the environment and otherwise manage the landscape to further protect water resources.[9]

Producers of nonpoint source pollution included in a basin management action plan (BMAP)[10] must comply with the established pollutant reductions by either implementing the appropriate BMPs or by conducting water quality monitoring.[11] A nonpoint source discharger may be subject

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[1] U.S. Environmental Protection Agency (EPA), *The Issue*, https://www.epa.gov/nutrientpollution/issue (last visited Jan. 19, 2022).
[2] *Id.*
[3] *Id.*
[4] EPA, *Sources and Solutions*, https://www.epa.gov/nutrientpollution/sources-and-solutions (last visited Jan. 19, 2022).
[5] EPA, *The Issue*, https://www.epa.gov/nutrientpollution/issue (last visited Jan. 19, 2022).
[6] *Id.*
[7] Point sources are "any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged." Nonpoint sources are not point sources. Fla. Admin. Code R. 62-620.200(37).
[8] University of Florida Institute of Food and Agricultural Sciences (UF/IFAS), *Best Management Practices*, https://hort.ifas.ufl.edu/yourfloridalawn/bmps.shtml (last visited Jan. 20, 2022); Department of Environmental Protection (DEP), *NPDES Stormwater Program*, https://floridadep.gov/Water/Stormwater (last visited Jan. 19, 2022).
[9] UF/IFAS, *Agricultural Best Management Practices*, https://bmp.ifas.ufl.edu/about-bmps/ (last visited Jan. 20, 2022).
[10] Basin Management Action Plans (BMAPs) are one of the primary mechanisms the DEP uses to address the entire pollution load for a watershed, including point and nonpoint discharges. Section 403.067(7), F.S.
[11] Section 403.067(7)(b)2.g., F.S. For example, BMPs for agriculture include activities such as managing irrigation water to minimize losses, limiting the use of fertilizers, and waste management.

to enforcement action by the DEP or a water management district based on a failure to implement these requirements.[12]

Golf Course BMPs for Fertilizer Application

The Florida golf course industry is the largest of any state.[13] As of 2019, there were 1,306 golf courses and 986 golf facilities in Florida.[14] Site placement and management of golf courses can create environmental harms, but BMPs can help mitigate harms or provide environmental benefits.[15]

Golf course BMPs attempt to curb excessive and unnecessary fertilization to prevent water pollution due to nutrient runoff or leaching from saturated or compacted soils.[16] BMPs for nutrient applications focus on maximizing plant uptake and include suggestions to:

- Follow UF/IFAS nitrogen (N) application rates;
- Apply nutrients when turfgrass is actively growing;
- Apply slow-release N fertilizers at the appropriate time of year, taking into consideration the release rate of the chosen material;
- Take into account that putting greens, tees, and landing areas require more nutrition than other areas like fairways and roughs;
- Exercise caution when applying nutrients during turfgrass establishment, because they are more susceptible to leaching and runoff at that time;
- During establishment, use appropriate rates and products to minimize N loss due to increased water applications, increased nutrients rates, and reduced root mass;
- Be aware of the pros and cons of different nutrient spreaders;
- Calibrate the chosen nutrient spreader properly;
- Properly store, load, and clean up fertilizer to reduce environmental risk;
- Avoid applying fertilizer to soils that are at or near saturation, or when the National Weather Service has issued a flood, tropical storm, or hurricane warning, or if heavy rains are forecast in the next 24 hours; and
- When using fertigation,[17] ensure that irrigation heads are properly aligned and adjusted to ensure no nutrient-loaded irrigation water is being applied to lakes and wetlands.[18]

Golf course BMPs also focus on other areas of landscape management to protect environmental resources, including:

- Planning, design, and construction;
- Irrigation;
- Cultural practices;
- Lake and aquatic management;
- Turf pest and pesticide management;

[12] Section 403.067(7)(b)2.h., F.S.
[13] *BMPs for the Enhancement of Env. Quality on FL Golf Courses*, 14 (Sept. 2021), *available at* http://flgolfbmp.com/view-the-bmp-guide (last visited Jan. 19, 2022).
[14] *Id.*
[15] *Id.* at 15.
[16] *Id.* at 144.
[17] Fertigation is fertilizer application through an irrigation system. *Id.* at 152.
[18] *Id.* at 153.

- Maintenance operations;
- Pollinator protection; and
- Energy conservation.[19]

Green Industries BMP Certification

The UF/IFAS currently offers the Green Industries BMPs program, which teaches environmentally safe landscaping practices that protect water quality and natural resources.[20] The program was created for people working in lawn-care and landscape maintenance. The program includes golf course employees among those who benefit from green industries BMPs training.[21]

Local Government Ordinances Relating to Golf Courses BMPs

Local governments often require fertilizer on golf courses to be used in accordance with the *Best Management Practices for the Enhancement of Environmental Quality on Florida Golf Courses*; or they may provide fertilizer restrictions exemptions for golf courses that follow golf course BMPs.[22] Local governments may also regulate fertilizer use in addition to requiring or encouraging golf course BMPs.[23]

In addition to fertilizer, local government may also require or encourage golf course irrigation practices to align with golf course BMPs.[24] Local governments may also regulate water use separately from golf course BMPs.[25]

III. Effect of Proposed Changes:

Section 1 creates s. 403.9339, F.S., relating to golf course BMPs certification. The bill requires the UF/IFAS in coordination with the DEP to administer a certification for golf course BMPs as a means of documenting and ensuring compliance with BMPs for fertilizer application to golf courses.

The bill requires the UF/IFAS, in cooperation with the DEP, to:

- Provide training and testing programs in golf course BMPs and may issue certificates demonstrating satisfactory completion of the training; and

[19] *Id.* at 3-4.
[20] UF/IFAS, *Green Industries BMPs*, https://gibmp.ifas.ufl.edu/ (last visited Jan. 20, 2022); UF/IFAS, *FL Friendly Landscaping Program*, https://ffl.ifas.ufl.edu/ffl-and-you/gi-bmp-program/ (last visited Jan. 20, 2022).
[21] *Id.*
[22] *See, e.g.*, Boca Raton Ord. No. 17-265 (fertilizer content and application rates), Alachua County Ord. No. 77-12 (groundwater protection), Collier County Ord. No. 54-33 (exemptions), and Jacksonville Ord. No. 366-610 (exemptions).
[23] *See, e.g.*, Miami-Dade Ord. No. 18C-8 (requirements related to golf courses, athletic fields, specialized turf, and parks); and Palm Beach County Ord. Nos. 11-407 (fertilizer free zones), 11-408 (fertilizer content and application rates), and 11-409 (fertilizer application practices).
[24] *See, e.g.*, Miami-Dade Ord. No. 18C-8 (requirements related to golf courses, athletic fields, specialized turf, and parks) and Alachua County Ord. No. 77-64 (exemptions),
[25] *See, e.g.*, Palm Beach County Ord. No. 27-180 (approved uses of reclaimed water) and Boca Raton Ord. No. 17-57 (landscape irrigation restrictions)

- Approve training and testing programs in golf course BMPs in the future that are equivalent to or more comprehensive that the original training and testing programs. The programs must be reviewed and reapproved by the UF/IFAS if significant changes are made.

The bill requires an applicant to submit a copy of the training certificate to the UF/IFAS to obtain a golf course BMPs certification.

The bill provides that a golf course BMPs certification expires four years after the date of issuance. Upon expiration or after a grace period of not more than 30 days after the expiration date, a recertification may be reissued. The bill specifies that before applying for recertification, an applicant must complete eight classroom hours of acceptable continuing education, including at least two hours addressing fertilizer BMPs. The bill requires an applicant to submit proof of completion of the eight classroom hours of continuing education to the UF/IFAS to obtain golf course BMPs recertification.

The bill provides that a person certified in golf course BMPs is exempt from:
- Additional local training; and
- Local ordinances relating to water and fertilizer use blackout periods or restrictions, unless a state of emergency is declared.

The bill provides that these provisions do not exempt a certified person from complying with the rules and requirements for basin management action plans (BMAP) if the golf course is located within a BMAP.

The bill provides that the UF/IFAS may provide the certification status of persons certified in golf course BMPs to local and state governmental entities. The bill encourages the UF/IFAS to create a registry of persons certified in golf course BMPs on its website.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The UF/IFAS may incur costs in administering training and testing certification programs and continuing education in golf course best management practices.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 403.9339 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on February 28, 2022:
The committee substitute:

- Directs the turfgrass science program at UF/IFAS to administer the certification for golf course best management practices (BMPs), instead of the DEP. The turfgrass science program will coordinate with the DEP.
- Provides a certified person may be exempt from additional local training and local ordinances relating to water and fertilizer use blackout periods or restrictions, unless a state of emergency is declared. The amendment adds that the certified person must continue to coordinate with the local government to ensure that they adhere to the comprehensive BMPs for that specific community.
- Clarifies that this section does not exempt a certified person from complying with the rules and requirements for basin management action plans when applicable.
- Deletes the rulemaking authorization.

CS by Environment and Natural Resources on January 24, 2022:
Removes the golf course best management practices certification and recertification fees.

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 Environment and Natural Resources; and
Senator Gruters

592-02258-22 20221556c1

A bill to be entitled

An act relating to golf course best management practices certification; creating s. 403.9339, F.S.; directing the Department of Environmental Protection to work and cooperate with the turfgrass science program at the University of Florida Institute of Food and Agricultural Sciences to administer a certification for golf course best management practices and provide and approve certification training and testing programs; providing certification and recertification requirements; providing that such certification exempts persons from certain local testing and local ordinance regulations; providing an exception; authorizing the department to share certification information with local and state governmental entities; encouraging the department to create an online certification registry; directing the department to adopt rules; providing an effective date.

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

Section 1. Section 403.9339, Florida Statutes, is created to read:

403.9339 Golf course best management practices certification.—

(1) To provide a means of documenting and ensuring compliance with best management practices for fertilizer application to golf courses, the department shall work with the

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

592-02258-22 20221556c1

turfgrass science program at the University of Florida Institute of Food and Agricultural Sciences to administer a certification for golf course best management practices.

(2) The department, in cooperation with the turfgrass science program at the University of Florida Institute of Food and Agricultural Sciences, shall:

(a) Provide training and testing programs in golf course best management practices and may issue certificates demonstrating satisfactory completion of the training.

(b) Approve training and testing programs in golf course best management practices that are equivalent to or more comprehensive than the programs provided by the department under paragraph (a). Such programs must be reviewed and reapproved by the department if significant changes are made.

(3) To obtain a golf course best management practices certification, an applicant must submit to the department a copy of the training certificate issued by the department under subsection (2).

(4)(a) A golf course best management practices certification issued under this section expires 4 years after the date of issuance. Upon expiration of the certification, or after a grace period of not more than 30 days after the expiration date, a recertification may be issued.

(b) Before applying for recertification, an applicant must complete 8 classroom hours of acceptable continuing education, of which at least 2 hours must address fertilizer best management practices.

(5) To obtain a golf course best management practices recertification, an applicant must submit to the department

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

proof of having completed the 8 classroom hours of continuing education pursuant to subsection (4).

(6) A person certified under this section is exempt from:

(a) Additional local testing.

(b) Local ordinances relating to water and fertilizer use blackout periods or restrictions, unless a state of emergency is declared.

(7)(a) The department may provide the certification status of persons certified under this section to local and state governmental entities.

(b) The department is encouraged to create a registry of persons certified under this section on its website.

(8) The department shall adopt rules to administer this section.

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

2/28/22
Meeting Date

Senate Approps.
Committee

SB 1556
Bill Number or Topic

Amendment Barcode (if applicable)

Name Paul Owens

Phone 850-222-6277

Address 308 N. Monroe St.
Street

Tallahassee, FL 32301
City State Zip

Email powens@1000fof.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: 1000 Friends of Florida

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

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

BILL:	SB 1582
INTRODUCER:	Senator Harrell
SUBJECT:	Commercial Motor Vehicle Registration
DATE:	February 25, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	**Favorable**
2.	Wells	Hrdlicka	ATD	**Recommend: Favorable**
3.	Wells	Sadberry	AP	**Favorable**

I. Summary:

SB 1582 addresses the issuance of license plates and cab cards for commercial motor vehicles registered in accordance with the International Registration Plan (apportioned vehicles).

Currently apportioned vehicles are issued an annual license plate and a cab card denoting the declared vehicle weight for each apportioned jurisdiction in which the vehicle is authorized to operate. Beginning January 1, 2024, the bill requires apportioned vehicles to be issued a license plate for a 3-year period, at which time the plate must be replaced upon renewal.

Under the bill, the cab card still must be renewed annually. The existing $28 fee still applies, but payment of the fee is triggered solely by annual issuance of the cab card, rather than by annual issuance of both the license plate and the cab card.

The bill also authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) to replace a damaged or worn license plate at no cost to an applicant surrendering the current license plate.

The bill presents no apparent fiscal impact.

The bill takes effect July 1, 2022.

II. Present Situation:

Generally, current law requires the DHSMV, upon receipt of an application and payment of the appropriate fees, to issue to a vehicle owner or lessee a certificate of registration and a license

plate.[1] Registration license plates are issued for a 10-year period and must be replaced upon renewal at the end of the 10-year period. The fee for plate replacement is $28, and such fees must be deposited into the Highway Safety Operating Trust Fund. A validation sticker must also be issued, reflecting the owner's birth month, license plate number, and the year of expiration, or the appropriate renewal period if the owner is not a natural person.[2]

However, a commercial motor vehicle[3] registered in accordance with the International Registration Plan,[4] also known as "apportioned vehicles," must be issued an *annual* license plate, as well as a cab card denoting the declared gross vehicle weight for each apportioned jurisdiction in which the vehicle is authorized to operate.[5] The $28 plate renewal fee is paid upon initial registration and then annually upon subsequent renewal.

Industry representatives have described difficulties associated with annual replacement of apportioned vehicle license plates:

> [The] IRP plates must be physically changed each year on the truck. This process is onerous on carriers who have several hundred registered vehicles across the country. [The] proposal would still require the annual registration (and maintain all existing fees paid annually)…[6]

A license plate that is damaged or defaced may be required to be replaced. The registrant applies to the DHSMV for a replacement plate and pays a $28 fee, which is deposited into the Highway Safety Operating Trust Fund.[7]

III. Effect of Proposed Changes:

The bill amends s. 320.06(1)(b), F.S., to allow apportioned vehicles to be issued a license plate for a 3-year period, instead of the current annual issuance, beginning January 1, 2024. The plate must be replaced upon renewal at the end of the 3-year period and, as under current law, each plate must include a validation sticker reflecting the month of expiration of the plate. The current

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[1] Section 320.06(1)(a), F.S. *See* s. 320.0706, F.S., for license plate display requirements for commercial trucks with a gross vehicle weight of 26,001 pounds or more and for dump trucks and truck tractors.
[2] Section 320.06(1)(b)1., F.S. Renewed based on registration periods and renewal periods established in current law. *See* s. 320.055, F.S.
[3] Defined in s. 320.01(25), F.S., for purposes of vehicle registration as any vehicle not owned or operated by a governmental entity, which uses special fuel or motor fuel on the public highways, and which has a gross vehicle weight of 26,001 pounds or more, or has three or more axles regardless of weight, or is used in combination when the weight of such combination exceeds 26,001 pounds gross vehicle weight.
[4] Section 320.0715(1), F.S., requires all apportionable vehicles domiciled in this state to be registered in accordance with the International Registration Plan and to display license plates. The International Registration Plan (IRP) is "a reciprocal agreement, meaning that when the vehicle is registered in the jurisdiction where the motor carrier is based, the registration is valid in all the other IRP member jurisdictions. Additionally, the IRP registration is 'apportioned' because the fees paid to the base jurisdiction are divided among all the member jurisdictions in which the vehicle(s) operated. IRP member jurisdictions are the lower 48 states, the District of Columbia, and the 10 Canadian provinces."DHSMV, Commercial Motor Vehicle Drivers, *International Registration Plan*, available at https://www.flhsmv.gov/driver-licenses-id-cards/commercial-motor-vehicle-drivers/international-registration-plan/ (last visited January 28, 2022).
[5] Section 320.06(1)(b)1., F.S.
[6] *See* email to Senate Transportation Committee staff, October 25, 2021 (on file in the Senate Transportation Committee).
[7] Section 320.0607, F.S.

requirement for the issuance of annual license plates to apportioned vehicles expires on December 31, 2023.

Under the bill, the cab card still must be renewed annually. The existing $28 fee still applies, but payment of the fee is triggered solely by annual issuance of the cab card, rather than by annual issuance of both the license plate and the cab card. The fee also continues to be deposited into the Highway Safety Operating Trust Fund.

Lastly, the bill provides that if the license plate is damaged or worn, the plate may be replaced at no charge by applying to the DHSMV and surrendering the current plate.

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:

Article VII, s. 19 of the Florida Constitution prohibits the imposition or authorization of a new state tax or fee except through legislation approved by two-thirds of the membership of each house of the legislature and approval by the Governor. If the bill imposes a new fee, a two-thirds vote of the membership of each house may be required.

As noted, payment of the $28 fee under the bill is triggered solely by annual issuance of the cab card, rather than by annual issuance of both the license plate and the cab card. The applicant pays the same fee under current law as under the bill; thus, the bill does not appear to impose a new fee.

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. The provisions of the bill changing how long an apportioned vehicle's license plate is valid do not apply until January 1, 2024. The $28 renewal fee continues to be required with the issuance of the renewed cab card. There may be some minimal cost savings related to manufacture and mailing of plates as apportioned vehicles transition to the 3-year plate renewal period and there may be minimal costs related to replacement of damaged plates at no cost to the registrant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 320.06 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 Harrell

25-01249C-22 20221582__

A bill to be entitled

An act relating to commercial motor vehicle registration; amending s. 320.06, F.S.; providing for future expiration of a provision relating to vehicles with apportioned registrations; providing, beginning on a specified date, license plate and cab card requirements for vehicles registered in accordance with the International Registration Plan; specifying the fee for an original or renewal cab card and the trust fund where the fee is deposited; providing for the replacement at no charge of damaged or worn license plates; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 320.06, Florida Statutes, is amended to read:

320.06 Registration certificates, license plates, and validation stickers generally.—

(1)

(b)1. Registration license plates bearing a graphic symbol and the alphanumeric system of identification shall be issued for a 10-year period. At the end of the 10-year period, upon renewal, the plate shall be replaced. The department shall extend the scheduled license plate replacement date from a 6-year period to a 10-year period. The fee for such replacement is $28, $2.80 of which shall be paid each year before the plate is replaced, to be credited toward the next $28 replacement fee. The fees shall be deposited into the Highway Safety Operating

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25-01249C-22 20221582__

Trust Fund. A credit or refund may not be given for any prior years' payments of the prorated replacement fee if the plate is replaced or surrendered before the end of the 10-year period, except that a credit may be given if a registrant is required by the department to replace a license plate under s. 320.08056(8)(a). With each license plate, a validation sticker shall be issued showing the owner's birth month, license plate number, and the year of expiration or the appropriate renewal period if the owner is not a natural person. The validation sticker shall be placed on the upper right corner of the license plate. The license plate and validation sticker shall be issued based on the applicant's appropriate renewal period. The registration period is 12 months, the extended registration period is 24 months, and all expirations occur based on the applicant's appropriate registration period. Rental vehicles taxed pursuant to s. 320.08(6)(a) may elect a permanent registration period, provided payment of the appropriate license taxes and fees occurs annually.

2. A vehicle that has an apportioned registration shall be issued an annual license plate and a cab card that denote the declared gross vehicle weight for each apportioned jurisdiction in which the vehicle is authorized to operate. This subparagraph expires December 31, 2023.

3. Beginning January 1, 2024, a vehicle registered in accordance with the International Registration Plan must be issued a license plate for a 3-year period. At the end of the 3-year period, upon renewal, the license plate must be replaced. Each license plate must include a validation sticker showing the month of expiration. A cab card denoting the declared gross

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

vehicle weight for each apportioned jurisdiction must be issued annually. The fee for an original or a renewal cab card is $28, which must be deposited into the Highway Safety Operating Trust Fund. If the license plate is damaged or worn, it may be replaced at no charge by applying to the department and surrendering the current license plate.

4.~~2.~~ In order to retain the efficient administration of the taxes and fees imposed by this chapter, the 80-cent fee increase in the replacement fee imposed by chapter 2009-71, Laws of Florida, is negated as provided in s. 320.0804.

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 Kelli Stargel
420 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Stargel,

I respectfully request that **SB 1582 – Dept. of Highway Safety and Motor Vehicles** be placed on the next available agenda for the Appropriations 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: Tim Sadberry, Staff Director
Alicia Weiss, Committee Administrative Assistant

REPLY TO:
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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 Appropriations

BILL:	PCS/CS/SB 1600 (534076)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Children, Families, and Elder Affairs Committee; and Senator Bradley
SUBJECT:	Treatment of Defendants Adjudicated Incompetent to Stand Trial
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Fav/CS**
2.	Gerbrandt	Money	AHS	**Recommend: Fav/CS**
3.	Gerbrandt	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1600 authorizes the Secretary of the Department of Children and Families (the DCF) to designate facilities where the DCF may provide competency restoration treatment to criminal defendants who:

- Have been charged with a felony;
- Have been deemed incompetent to stand trial due to a mental illness and committed to the DCF;
- Are being held in a jail awaiting admission to a DCF-run facility; and
- Are likely to regain competence to proceed in the foreseeable future.

The bill revises the definition of "forensic facility" to include separate and secure facilities contracted using DCF funding, and to include a mental health facility operated by a community mental health provider that may be co-located in a county jail and is deemed appropriate by the DCF."

The bill is likely to have a negative yet indeterminate fiscal impact on the DCF and may have a positive fiscal impact on private sector entities. See Section V. Fiscal Impact Statement.

The bill takes effect on July 1, 2022.

II. Present Situation:

Competency Restoration Treatment and Forensic Facilities

Chapter 916, F.S., governs the state forensic system, which is a network of state facilities and community services for persons who have mental health issues, an intellectual disability, or autism and who are involved with the criminal justice system. Offenders who are charged with a felony and adjudicated incompetent to proceed[1] and offenders who are adjudicated not guilty by reason of insanity may be involuntarily committed to state civil and forensic treatment facilities by the circuit court,[2] or in lieu of such commitment, may be released on conditional release[3] by the circuit court if the person is not serving a prison sentence.[4] Conditional release is release into the community accompanied by outpatient care and treatment. The committing court retains jurisdiction over the defendant while the defendant is under involuntary commitment or conditional release.[5]

A civil facility is, in part, a mental health facility established within the DCF or by contract with the DCF to serve individuals committed pursuant to ch. 394, F.S., and defendants pursuant to ch. 916, F.S., who do not require the security provided in a forensic facility.[6]

A forensic facility is a separate and secure facility established within the DCF or the APD to service forensic clients committed pursuant to ch. 916, F.S.[7] A separate and secure facility means a security-grade building for the purposes of separately housing individuals with mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed from non-forensic residents.[8]

State Forensic System – Mental Health Treatment for Criminal Defendants

If a defendant is suspected of being incompetent, the court, counsel for the defendant, or the state may file a motion for examination to have the defendant's cognitive state assessed.[9] If the motion is well-founded, the court will appoint experts to evaluate the defendant's cognitive state. The defendant's competency is then determined by the judge in a subsequent hearing.[10] If the defendant is found to be competent, the criminal proceeding resumes.[11] If the defendant is found to be incompetent to proceed, the proceeding may not resume unless competency is restored.[12]

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[1] "Incompetent to proceed" means "the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding" or "the defendant has no rational, as well as factual, understanding of the proceedings against her or him." Section 916.12(1), F.S.
[2] Sections 916.13, 916.15, and 916.302, F.S.
[3] Conditional release is release into the community accompanied by outpatient care and treatment. Section 916.17, F.S.
[4] Section 916.17(1), F.S.
[5] Section 916.16(1), F.S.
[6] Section 916.106(4), F.S.
[7] Section 916.106(10), F.S. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed pursuant to chapter 916, F.S., from non-forensic residents.
[8] *Id.*
[9] Rule 3.210, Fla.R.Crim.P.
[10] *Id.*
[11] Rule 3.212, Fla.R.Crim.P.
[12] *Id.*

Sections 916.13 and 916.15, F.S., set forth the criteria under which a court may involuntarily commit a defendant charged with a felony who has been adjudicated incompetent to proceed due to a mental illness, or who has been found not guilty by reason of insanity. If a person is committed pursuant to either statute, the administrator at the commitment facility must submit a report to the court:

- No later than 6 months after a defendant's admission date and at the end of any period of extended commitment; or
- At any time the administrator has determined that the defendant has regained competency or no longer meets the criteria for involuntary commitment.[13]

State Treatment Facilities

State treatment facilities are the most restrictive settings for forensic services. The forensic facilities provide assessment, evaluation, and treatment to the individuals who have mental health issues and who are involved with the criminal justice system.[14] In addition to general psychiatric treatment approaches and environment, specialized services include:

- Psychosocial rehabilitation;
- Education;
- Treatment modules such as competency, anger management, mental health awareness, medication, and relapse prevention;
- Sexually transmitted disease education and prevention;
- Substance abuse awareness and prevention;
- Vocational training;
- Occupational therapies; and
- Full range of medical and dental services.[15]

Mental Health Treatment Facilities

The DCF runs three mental health treatment facilities: the Florida State Hospital (FSH), the Northeast Florida State Hospital (NEFSH), and the North Florida Evaluation and Treatment Center (NFETC).[16] The DCF also contracts with a private provider, Wellpath Recovery Solutions (Wellpath), to operate three additional facilities that provide competency restoration training. The facilities are the South Florida Evaluation and Treatment Center, South Florida State Hospital, and Treasure Coast Treatment Facility.[17]

The FSH, located in Chattahoochee, Florida, is a state psychiatric hospital that provides civil and forensic services.[18] The hospital's civil services are comprised of the following three units with a total of 490 beds:

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[13] Section 916.13(2)-(3), F.S.
[14] The DCF, *About Adult Forensic Mental Health (AFMH)*, available at https://www.myflfamilies.com/service-programs/samh/adult-forensic-mental-health/forensic-facilities.shtml (last visited January 28, 2022).
[15] Id.
[16] The DCF, *State Mental Health Treatment Facilities*, available at https://www.myflfamilies.com/service-programs/mental-health/state-mental-health-treatment-facilities.shtml (last visited January 28, 2022).
[17] *Id*.
[18] The DCF, *Florida State Hospital Services and Programs*, available at https://www.myflfamilies.com/service-programs/mental-health/fsh/services-programs.shtml (last visited January 28, 2022).

- Civil Admissions evaluates and provides psychiatric services primarily for newly admitted acutely ill male and female civil residents between the ages of 18 and 64;
- Civil Transition Program serves civil residents and individuals previously in a forensic setting who no longer need that level of security and with court approval, may reside in a less restrictive civil environment; and
- Specialty Care Program serves a diverse population of individuals requiring mental health treatment and services, including civil and forensic step downs.[19]

The hospital's forensic services section evaluates and treats persons with felony charges who have been adjudicated incompetent to stand trial or not guilty by reason of insanity. Forensic services is comprised of the following two units;

- Forensic Admission is a maximum security facility that assesses new admissions, provides short-term treatment and competency restoration for defendants found incompetent to stand trial, and behavior stabilization for persons committed as not guilty by reason of insanity; and
- Forensic Central provides longer-term treatment and serves a seriously and persistently mentally ill population who are incompetent to proceed or not guilty by reason of insanity.[20]

The NEFSH, located in Macclenny, Florida, is a state psychiatric hospital that provides civil services.[21] The facility operates 633 beds and is the largest state-owned provider of psychiatric care and treatment to civilly committed individuals in Florida. Referrals are based upon community and regional priorities for admission.[22]

The NFETC, located in Gainesville, Florida, is an evaluation and treatment center for people with mental illnesses who are involved in the criminal justice system.[23] The center has 193 beds open for the evaluation and treatment of residents who have major mental disorders. These residents are either incompetent to proceed to trial or have been judged to be not guilty by reason of insanity.[24]

As of January 13, 2022, there are a total of 548 individuals on the waitlist for forensic beds at the state's mental health facilities.[25] Of these, 492 individuals have been on the waitlist for more than 15 days.[26] Individuals spend 59 days on the waitlist on average.[27]

Jail-Based Forensic Diversion

In addition to state-run forensic facilities, some other states currently operate jail-based treatment programs for individuals deemed incompetent to proceed.

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[19] *Id*.
[20] *Id*.
[21] The DCF, *State Mental Health Treatment Facilities North Florida Evaluation and Treatment Center, About the Center*, available at http://www.myflfamilies.com/service-programs/mental-health/nefsh/about.shtml (last visited January 28, 2022).
[22] *Id*.
[23] *See* the DCF, *State Mental Health Treatment Facilities North Florida Evaluation and Treatment Center (NFETC)*, available at https://www.myflfamilies.com/service-programs/mental-health/nfetc/about.shtml (last visited January 28, 2022).
[24] *Id*.
[25] E-mail from John Paul Fiore, Legislative Affairs Director, the DCF (January 29, 2022) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[26] *Id*.
[27] *Id*.

In 2011, the state of Georgia contracted with a university forensic program to develop a 16-bed, jail-based diversion pilot program.[28] The program was developed as a means of addressing a waitlist for admission to a state hospital forensic unit which had grown to more than 60 days.[29] The program opened in October 2011, and 16 defendants were admitted to the unit, immediately shortening the wait time for inpatient hospitalization to less than 20 days.[30] Because almost all competency evaluations were performed by the university forensic service, once an evaluator deemed a defendant incompetent to proceed, that defendant could be transferred to the unit and restoration services initiated before the court made a formal finding of incompetence.[31] As a result, restoration could often be accomplished without the court ever making a formal finding of incompetence.[32]

Since 2013, Colorado's Office of Behavioral Health[33] has contracted with Wellpath to operate a jail-based diversion program, known as the RISE Program, in addition to mental health treatment facilities.[34] Wellpath was awarded the initial contract through a competitive procurement process in 2013 and subsequent contract expansions in 2015 and 2018.[35] The program is divided between a county detention facility and a jail and currently provides 114 total patient beds.[36]

Wellpath also operates the Kern County Admission, Evaluation, and Stabilization Center (AES) in Bakersfield, California.[37] The Kern County AES is a 60-bed jail-based competency evaluation and restoration program established through a collaboration between the Kern County Sheriff's Office, California Department of State Hospitals (DSH), and Wellpath.[38] Wellpath was awarded the contract through a competitive procurement process in 2018.[39]

III. Effect of Proposed Changes:

The bill amends s. 916.13, F.S., permitting a forensic client who has been deemed incompetent to proceed due to a mental illness and committed to the DCF, and who is being held in a jail awaiting admission to a facility of the DCF, to obtain restoration treatment at any facility the DCF Secretary deems appropriate. The bill limits treatment at such facilities to defendants who are likely to regain competence in the foreseeable future.

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[28] The Journal of the American Academy of Psychiatry and the Law, *A Jail-Based Competency Restoration Unit as a Component of a Continuum of Restoration Services*, November 2019, available at http://jaapl.org/content/early/2019/11/21/JAAPL.003893-20#sec-1 (last visited January 29, 2022).
[29] *Id*.
[30] *Id*.
[31] *Id*.
[32] *Id*.
[33] The Office of Behavioral Health is Colorado's state agency handling behavioral health matters.
[34] The Colorado Department of Human Services, *Request for Applications: Jail-Based Program for Individuals Court Ordered to Forensic Evaluation and Treatment*, p. 3-5 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter, "The Colorado RFP).
[35] Wellpath Recovery Solutions, *RISE Program at Arapahoe County Detention Center*, available at https://wellpathcare.com/rise-program-at-arapahoe-county-detention-center/ (last visited January 28, 2022).
[36] The Colorado RFP at p. 4.
[37] Wellpath Recovery Solutions, *Kern County AES Center*, available at https://wellpathcare.com/kern-county-aes-center/ (last visited January 28, 2022).
[38] *Id*.
[39] *Id*.

The bill also amends s. 916.106, F.S., revising the definition of "forensic facility" to include separate and secure facilities contracted using DCF funding, and to include a mental health facility operated by a community mental health provider that may be co-located in a county jail and is deemed appropriate by the DCF.

The bill may alleviate the waitlist for forensic treatment beds at existing DCF-run facilities by creating additional venues where individuals deemed incompetent to stand trial due to a mental illness, but who are likely to regain competence to proceed in the foreseeable future, can receive restoration treatment.

The DCF anticipates that the proposed language would also provide flexibility in identifying and securing community-based or jail-based competency restoration treatment, for individuals who can be served in a less restrictive environment.[40]

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.

[40] The DCF, *Agency Analysis of SB 1600*, p. 2, January 8, 2022 (on file with the Senate Committee on Children, Families, and Elder Affairs).

B. Private Sector Impact:

PCS/CS/SB 1600 may have a positive fiscal impact on private entities with whom the DCF contracts to operate jail-based treatment programs under the bill.

C. Government Sector Impact:

The bill is likely to have significant yet indeterminate fiscal impact on the DCF. Currently, if a person is adjudicated incompetent to proceed they are provided competency training at one of DCF's forensic or civil state mental health treatment facilities. There is a waitlist to receive services at one of DCF's mental health treatment facilities, and on average an individual spends 59 days awaiting services. The bill creates additional venues where certain individuals can receive restoration treatment and therefore may alleviate the waitlist. To the extent that the DCF would need an appropriation to cover the restoration services provided at the additional venues, as opposed to diverting the current budget for restoration services to the additional venues, the bill will have a significant yet, indeterminate fiscal impact on the DCF. The fiscal impact is indeterminate because it is unclear how many individuals will receive treatment at the newly designated facilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 916.106 and 916.13.

IX. Additional Information:

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

PCS (534076) by Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services):
The committee substitute:

- Modifies the definition of "forensic facility" under s. 916.106, F.S., to include a facility contracted using DCF funds.
- Clarifies that restoration treatment can be provided at any forensic facility deemed appropriate by the DCF Secretary to clients who have been committed to the DCF.

CS by Children, Families, and Elder Affairs on February 1, 2022:
The committee substitute:

- Modifies the existing definition of "forensic facility" under s. 916.106, F.S., to provide that "the term includes a mental health facility operated by a community

mental health provider which may be co-located in a county jail and which is deemed appropriate by the department."

- Requires facilities designated for jail-based diversion programs to be operated by a community mental health provider.
- Provides that such facilities may be co-located in a county jail.

B. Amendments:

None.

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

534076

576-03082-22

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

A bill to be entitled

An act relating to treatment of defendants adjudicated incompetent to stand trial; amending s. 916.106, F.S.; revising the definition of the term "forensic facility"; amending s. 916.13, F.S.; authorizing restoration treatment at any forensic facility deemed appropriate by the Department of Children and Families for a forensic client who meets specified criteria; providing an effective date.

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

Section 1. Subsection (10) of section 916.106, Florida Statutes, is amended to read:

916.106 Definitions.—For the purposes of this chapter, the term:

(10) "Forensic facility" means a separate and secure facility established within the department or agency, or contracted using department funding, to serve forensic clients. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed pursuant to this chapter from nonforensic residents. The term includes a mental health facility operated by a community mental health provider which may be colocated in a county jail and which is deemed

534076

576-03082-22

appropriate by the department.

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

916.13 Involuntary commitment of defendant adjudicated incompetent.—

(2) A defendant who has been charged with a felony and who has been adjudicated incompetent to proceed due to mental illness, and who meets the criteria for involuntary commitment under this chapter, may be committed to the department, and the department shall retain and treat the defendant. Restoration treatment for a forensic client who has been committed to the department, who is held in a jail awaiting admission to a forensic facility, and who is likely to regain competence to proceed in the foreseeable future may be provided at any forensic facility deemed appropriate by the department secretary.

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

(b) Within 6 months after the date of admission and at the end of any period of extended commitment, or at any time the administrator or his or her designee determines that the defendant has regained competency to proceed or no longer meets

the criteria for continued commitment, the administrator or designee shall file a report with the court pursuant to the applicable Florida Rules of Criminal Procedure.

(c) A competency hearing must be held within 30 days after the court receives notification that the defendant is competent to proceed or no longer meets the criteria for continued commitment. The defendant must be transported to the committing court's jurisdiction for the hearing. If the defendant is receiving psychotropic medication at a mental health facility at the time he or she is discharged and transferred to the jail, the administering of such medication must continue unless the jail physician documents the need to change or discontinue it. The jail and department physicians shall collaborate to ensure that medication changes do not adversely affect the defendant's mental health status or his or her ability to continue with court proceedings; however, the final authority regarding the administering of medication to an inmate in jail rests with the jail physician.

Section 3. This act shall take effect July 1, 2022.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1600
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Children, Families, and Elder Affairs Committee; and Senator Bradley
SUBJECT:	Treatment of Defendants Adjudicated Incompetent to Stand Trial
DATE:	March 2, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Fav/CS**
2.	Gerbrandt	Money	AHS	**Recommend: Fav/CS**
3.	Gerbrandt	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1600 authorizes the Secretary of the Department of Children and Families (the DCF) to designate facilities where the DCF may provide competency restoration treatment to criminal defendants who:

- Have been charged with a felony;
- Have been deemed incompetent to stand trial due to a mental illness and committed to the DCF;
- Are being held in a jail awaiting admission to a DCF-run facility; and
- Are likely to regain competence to proceed in the foreseeable future.

The bill revises the definition of "forensic facility" to include separate and secure facilities contracted using DCF funding, and to include a mental health facility operated by a community mental health provider that may be co-located in a county jail and is deemed appropriate by the DCF."

The bill is likely to have a negative yet indeterminate fiscal impact on the DCF and may have a positive fiscal impact on private sector entities. See Section V. Fiscal Impact Statement.

The bill takes effect on July 1, 2022.

II. Present Situation:

Competency Restoration Treatment and Forensic Facilities

Chapter 916, F.S., governs the state forensic system, which is a network of state facilities and community services for persons who have mental health issues, an intellectual disability, or autism and who are involved with the criminal justice system. Offenders who are charged with a felony and adjudicated incompetent to proceed[1] and offenders who are adjudicated not guilty by reason of insanity may be involuntarily committed to state civil and forensic treatment facilities by the circuit court,[2] or in lieu of such commitment, may be released on conditional release[3] by the circuit court if the person is not serving a prison sentence.[4] Conditional release is release into the community accompanied by outpatient care and treatment. The committing court retains jurisdiction over the defendant while the defendant is under involuntary commitment or conditional release.[5]

A civil facility is, in part, a mental health facility established within the DCF or by contract with the DCF to serve individuals committed pursuant to ch. 394, F.S., and defendants pursuant to ch. 916, F.S., who do not require the security provided in a forensic facility.[6]

A forensic facility is a separate and secure facility established within the DCF or the APD to service forensic clients committed pursuant to ch. 916, F.S.[7] A separate and secure facility means a security-grade building for the purposes of separately housing individuals with mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed from non-forensic residents.[8]

State Forensic System – Mental Health Treatment for Criminal Defendants

If a defendant is suspected of being incompetent, the court, counsel for the defendant, or the state may file a motion for examination to have the defendant's cognitive state assessed.[9] If the motion is well-founded, the court will appoint experts to evaluate the defendant's cognitive state. The defendant's competency is then determined by the judge in a subsequent hearing.[10] If the defendant is found to be competent, the criminal proceeding resumes.[11] If the defendant is found to be incompetent to proceed, the proceeding may not resume unless competency is restored.[12]

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[1] "Incompetent to proceed" means "the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding" or "the defendant has no rational, as well as factual, understanding of the proceedings against her or him." Section 916.12(1), F.S.
[2] Sections 916.13, 916.15, and 916.302, F.S.
[3] Conditional release is release into the community accompanied by outpatient care and treatment. Section 916.17, F.S.
[4] Section 916.17(1), F.S.
[5] Section 916.16(1), F.S.
[6] Section 916.106(4), F.S.
[7] Section 916.106(10), F.S. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed pursuant to chapter 916, F.S., from non-forensic residents.
[8] *Id.*
[9] Rule 3.210, Fla.R.Crim.P.
[10] *Id.*
[11] Rule 3.212, Fla.R.Crim.P.
[12] *Id.*

Sections 916.13 and 916.15, F.S., set forth the criteria under which a court may involuntarily commit a defendant charged with a felony who has been adjudicated incompetent to proceed due to a mental illness, or who has been found not guilty by reason of insanity. If a person is committed pursuant to either statute, the administrator at the commitment facility must submit a report to the court:

- No later than 6 months after a defendant's admission date and at the end of any period of extended commitment; or
- At any time the administrator has determined that the defendant has regained competency or no longer meets the criteria for involuntary commitment.[13]

State Treatment Facilities

State treatment facilities are the most restrictive settings for forensic services. The forensic facilities provide assessment, evaluation, and treatment to the individuals who have mental health issues and who are involved with the criminal justice system.[14] In addition to general psychiatric treatment approaches and environment, specialized services include:

- Psychosocial rehabilitation;
- Education;
- Treatment modules such as competency, anger management, mental health awareness, medication, and relapse prevention;
- Sexually transmitted disease education and prevention;
- Substance abuse awareness and prevention;
- Vocational training;
- Occupational therapies; and
- Full range of medical and dental services.[15]

Mental Health Treatment Facilities

The DCF runs three mental health treatment facilities: the Florida State Hospital (FSH), the Northeast Florida State Hospital (NEFSH), and the North Florida Evaluation and Treatment Center (NFETC).[16] The DCF also contracts with a private provider, Wellpath Recovery Solutions (Wellpath), to operate three additional facilities that provide competency restoration training. The facilities are the South Florida Evaluation and Treatment Center, South Florida State Hospital, and Treasure Coast Treatment Facility.[17]

The FSH, located in Chattahoochee, Florida, is a state psychiatric hospital that provides civil and forensic services.[18] The hospital's civil services are comprised of the following three units with a total of 490 beds:

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[13] Section 916.13(2)-(3), F.S.
[14] The DCF, *About Adult Forensic Mental Health (AFMH)*, available at https://www.myflfamilies.com/service-programs/samh/adult-forensic-mental-health/forensic-facilities.shtml (last visited January 28, 2022).
[15] Id.
[16] The DCF, *State Mental Health Treatment Facilities*, available at https://www.myflfamilies.com/service-programs/mental-health/state-mental-health-treatment-facilities.shtml (last visited January 28, 2022).
[17] *Id*.
[18] The DCF, *Florida State Hospital Services and Programs*, available at https://www.myflfamilies.com/service-programs/mental-health/fsh/services-programs.shtml (last visited January 28, 2022).

- Civil Admissions evaluates and provides psychiatric services primarily for newly admitted acutely ill male and female civil residents between the ages of 18 and 64;
- Civil Transition Program serves civil residents and individuals previously in a forensic setting who no longer need that level of security and with court approval, may reside in a less restrictive civil environment; and
- Specialty Care Program serves a diverse population of individuals requiring mental health treatment and services, including civil and forensic step downs.[19]

The hospital's forensic services section evaluates and treats persons with felony charges who have been adjudicated incompetent to stand trial or not guilty by reason of insanity. Forensic services is comprised of the following two units;

- Forensic Admission is a maximum security facility that assesses new admissions, provides short-term treatment and competency restoration for defendants found incompetent to stand trial, and behavior stabilization for persons committed as not guilty by reason of insanity; and
- Forensic Central provides longer-term treatment and serves a seriously and persistently mentally ill population who are incompetent to proceed or not guilty by reason of insanity.[20]

The NEFSH, located in Macclenny, Florida, is a state psychiatric hospital that provides civil services.[21] The facility operates 633 beds and is the largest state-owned provider of psychiatric care and treatment to civilly committed individuals in Florida. Referrals are based upon community and regional priorities for admission.[22]

The NFETC, located in Gainesville, Florida, is an evaluation and treatment center for people with mental illnesses who are involved in the criminal justice system.[23] The center has 193 beds open for the evaluation and treatment of residents who have major mental disorders. These residents are either incompetent to proceed to trial or have been judged to be not guilty by reason of insanity.[24]

As of January 13, 2022, there are a total of 548 individuals on the waitlist for forensic beds at the state's mental health facilities.[25] Of these, 492 individuals have been on the waitlist for more than 15 days.[26] Individuals spend 59 days on the waitlist on average.[27]

Jail-Based Forensic Diversion

In addition to state-run forensic facilities, some other states currently operate jail-based treatment programs for individuals deemed incompetent to proceed.

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[19] *Id*.
[20] *Id*.
[21] The DCF, *State Mental Health Treatment Facilities North Florida Evaluation and Treatment Center, About the Center*, available at http://www.myflfamilies.com/service-programs/mental-health/nefsh/about.shtml (last visited January 28, 2022).
[22] *Id*.
[23] *See* the DCF, *State Mental Health Treatment Facilities North Florida Evaluation and Treatment Center (NFETC)*, available at https://www.myflfamilies.com/service-programs/mental-health/nfetc/about.shtml (last visited January 28, 2022).
[24] *Id*.
[25] E-mail from John Paul Fiore, Legislative Affairs Director, the DCF (January 29, 2022) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[26] *Id*.
[27] *Id*.

In 2011, the state of Georgia contracted with a university forensic program to develop a 16-bed, jail-based diversion pilot program.[28] The program was developed as a means of addressing a waitlist for admission to a state hospital forensic unit which had grown to more than 60 days.[29] The program opened in October 2011, and 16 defendants were admitted to the unit, immediately shortening the wait time for inpatient hospitalization to less than 20 days.[30] Because almost all competency evaluations were performed by the university forensic service, once an evaluator deemed a defendant incompetent to proceed, that defendant could be transferred to the unit and restoration services initiated before the court made a formal finding of incompetence.[31] As a result, restoration could often be accomplished without the court ever making a formal finding of incompetence.[32]

Since 2013, Colorado's Office of Behavioral Health[33] has contracted with Wellpath to operate a jail-based diversion program, known as the RISE Program, in addition to mental health treatment facilities.[34] Wellpath was awarded the initial contract through a competitive procurement process in 2013 and subsequent contract expansions in 2015 and 2018.[35] The program is divided between a county detention facility and a jail and currently provides 114 total patient beds.[36]

Wellpath also operates the Kern County Admission, Evaluation, and Stabilization Center (AES) in Bakersfield, California.[37] The Kern County AES is a 60-bed jail-based competency evaluation and restoration program established through a collaboration between the Kern County Sheriff's Office, California Department of State Hospitals (DSH), and Wellpath.[38] Wellpath was awarded the contract through a competitive procurement process in 2018.[39]

III. Effect of Proposed Changes:

The bill amends s. 916.13, F.S., permitting a forensic client who has been deemed incompetent to proceed due to a mental illness and committed to the DCF, and who is being held in a jail awaiting admission to a facility of the DCF, to obtain restoration treatment at any facility the DCF Secretary deems appropriate. The bill limits treatment at such facilities to defendants who are likely to regain competence in the foreseeable future.

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[28] The Journal of the American Academy of Psychiatry and the Law, *A Jail-Based Competency Restoration Unit as a Component of a Continuum of Restoration Services*, November 2019, available at http://jaapl.org/content/early/2019/11/21/JAAPL.003893-20#sec-1 (last visited January 29, 2022).
[29] *Id*.
[30] *Id*.
[31] *Id*.
[32] *Id*.
[33] The Office of Behavioral Health is Colorado's state agency handling behavioral health matters.
[34] The Colorado Department of Human Services, *Request for Applications: Jail-Based Program for Individuals Court Ordered to Forensic Evaluation and Treatment*, p. 3-5 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter, "The Colorado RFP).
[35] Wellpath Recovery Solutions, *RISE Program at Arapahoe County Detention Center*, available at https://wellpathcare.com/rise-program-at-arapahoe-county-detention-center/ (last visited January 28, 2022).
[36] The Colorado RFP at p. 4.
[37] Wellpath Recovery Solutions, *Kern County AES Center*, available at https://wellpathcare.com/kern-county-aes-center/ (last visited January 28, 2022).
[38] *Id*.
[39] *Id*.

The bill also amends s. 916.106, F.S., revising the definition of "forensic facility" to include separate and secure facilities contracted using DCF funding, and to include a mental health facility operated by a community mental health provider that may be co-located in a county jail and is deemed appropriate by the DCF.

The bill may alleviate the waitlist for forensic treatment beds at existing DCF-run facilities by creating additional venues where individuals deemed incompetent to stand trial due to a mental illness, but who are likely to regain competence to proceed in the foreseeable future, can receive restoration treatment.

The DCF anticipates that the proposed language would also provide flexibility in identifying and securing community-based or jail-based competency restoration treatment, for individuals who can be served in a less restrictive environment.[40]

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.

[40] The DCF, *Agency Analysis of SB 1600*, p. 2, January 8, 2022 (on file with the Senate Committee on Children, Families, and Elder Affairs).

B. Private Sector Impact:

CS/CS/SB 1600 may have a positive fiscal impact on private entities with whom the DCF contracts to operate jail-based treatment programs under the bill.

C. Government Sector Impact:

The bill is likely to have significant yet indeterminate fiscal impact on the DCF. Currently, if a person is adjudicated incompetent to proceed they are provided competency training at one of DCF's forensic or civil state mental health treatment facilities. There is a waitlist to receive services at one of DCF's mental health treatment facilities, and on average an individual spends 59 days awaiting services. The bill creates additional venues where certain individuals can receive restoration treatment and therefore may alleviate the waitlist. To the extent that the DCF would need an appropriation to cover the restoration services provided at the additional venues, as opposed to diverting the current budget for restoration services to the additional venues, the bill will have a significant yet, indeterminate fiscal impact on the DCF. The fiscal impact is indeterminate because it is unclear how many individuals will receive treatment at the newly designated facilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 916.106 and 916.13.

IX. Additional Information:

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

CS/CS by Appropriations on February 28, 2022:
The committee substitute:

- Modifies the definition of "forensic facility" under s. 916.106, F.S., to include a facility contracted using DCF funds.
- Clarifies that restoration treatment can be provided at any forensic facility deemed appropriate by the DCF Secretary to clients who have been committed to the DCF.

CS by Children, Families, and Elder Affairs on February 1, 2022:
The committee substitute:

- Modifies the existing definition of "forensic facility" under s. 916.106, F.S., to provide that "the term includes a mental health facility operated by a community

mental health provider which may be co-located in a county jail and which is deemed appropriate by the department."

- Requires facilities designated for jail-based diversion programs to be operated by a community mental health provider.
- Provides that such facilities may be co-located in a county jail.

B. Amendments:

None.

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

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

586-02591-22 20221600c1

A bill to be entitled

An act relating to treatment of defendants adjudicated incompetent to stand trial; amending s. 916.106, F.S.; revising the definition of the term "forensic facility"; amending s. 916.13, F.S.; providing that a forensic client who is being held in a jail awaiting admission to a Department of Children and Families facility and who is likely to regain competence to proceed may receive treatment at any facility designated by the department; providing an effective date.

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

Section 1. Subsection (10) of section 916.106, Florida Statutes, is amended to read:

916.106 Definitions.—For the purposes of this chapter, the term:

(10) "Forensic facility" means a separate and secure facility established within the department or agency to serve forensic clients. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed pursuant to this chapter from nonforensic residents. The term includes a mental health facility operated by a community mental health provider which may be colocated in a county jail and which is deemed appropriate by the department.

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

586-02591-22 20221600c1

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

916.13 Involuntary commitment of defendant adjudicated incompetent.—

(2) A defendant who has been charged with a felony and who has been adjudicated incompetent to proceed due to mental illness, and who meets the criteria for involuntary commitment under this chapter, may be committed to the department, and the department shall retain and treat the defendant. For a forensic client who is held in a jail awaiting admission to a facility of the department, and who is likely to regain competence to proceed in the foreseeable future, restoration treatment may be provided at any facility deemed appropriate by the department secretary.

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

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

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

applicable Florida Rules of Criminal Procedure.

(c) A competency hearing must be held within 30 days after the court receives notification that the defendant is competent to proceed or no longer meets the criteria for continued commitment. The defendant must be transported to the committing court's jurisdiction for the hearing. If the defendant is receiving psychotropic medication at a mental health facility at the time he or she is discharged and transferred to the jail, the administering of such medication must continue unless the jail physician documents the need to change or discontinue it. The jail and department physicians shall collaborate to ensure that medication changes do not adversely affect the defendant's mental health status or his or her ability to continue with court proceedings; however, the final authority regarding the administering of medication to an inmate in jail rests with the jail physician.

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

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 18, 2022

Senator Kelli Stargel, Chair
Senate Committee on Appropriations
420 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Stargel:

I respectfully request that Senate Bill 1600 be placed on the committee's agenda at your earliest convenience. This bill relates to treatment of defendants adjudicated incompetent to stand trial.

Thank you for your consideration.

Sincerely,

Jennifer Bradley

cc: Tim Sadberry, Staff Director
Alicia Weiss, 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 Appropriations

BILL:	SB 1682
INTRODUCER:	Senators Pizzo and Book
SUBJECT:	Transportation Facility Designations/98 Points of Light Road
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	**Favorable**
2.	McAuliffe	Hrdlicka	ATD	**Recommend: Favorable**
3.	McAuliffe	Sadberry	AP	**Favorable**

I. Summary:

SB 1682 designates the portion of S.R. A1A/Collins Avenue between 87th Terrace and 88th Street in Miami-Dade County as "98 Points of Light Road" and directs the Florida Department of Transportation (FDOT) to erect suitable markers.

The estimated cost to the FDOT to install the designation markers required under the bill is $1,040. See the "Fiscal Impact Statement" below for details.

The bill takes effect July 1, 2022.

II. Present Situation:

Section 334.071, F.S., provides that legislative designations of transportation facilities are for honorary or memorial purposes or to distinguish a particular facility. Such designations are not to be construed as requiring any action by local governments or private parties regarding the changing of any street signs, mailing addresses, or 911 emergency telephone number system listings, unless the legislation specifically provides for such changes.[1]

When the Legislature establishes road or bridge designations, the FDOT is required to place markers only at the termini specified for each highway segment or bridge designated by the law creating the designation and to erect any other markers it deems appropriate for the transportation facility.[2]

The FDOT may not erect the markers for honorary road or bridge designations unless the affected city or county commission enacts a resolution supporting the designation. When the

[1] Section 334.071(1), F.S.
[2] Section 334.071(2), F.S.

designated road or bridge segment is located in more than one city or county, each affected local government must pass resolutions supporting the designations before the installation of the markers.[3]

Surfside Condominium Collapse

On June 24, 2021, a 12-story oceanfront condominium in Surfside, Florida, partially collapsed just before dawn. Ninety-eight people, ranging from children to the elderly, lost their lives.

III. Effect of Proposed Changes:

The bill designates the portion of S.R. A1A/Collins Avenue between 87th Terrace and 88th Street in Miami-Dade County as "98 Points of Light Road" in honor of the 98 victims of the Surfside condominium collapse. The bill also directs the FDOT to erect suitable markers.

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.

[3] Section 334.071(3), F.S.

C. Government Sector Impact:

The estimated cost to erect the designation markers required under this bill is $1,040, based on the assumption that a minimum of two markers are required for each designation at a cost to the FDOT of no less than $520 each. The estimate includes sign fabrication, installation, and maintenance over time but does not include any additional expenses related to maintenance of traffic, dedication event costs, or replacement necessitated by damage, vandalism, or storm events. The FDOT is expected to absorb the estimated cost within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates an undesignated section of Florida law.

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 Pizzo

38-01544-22 20221682__

A bill to be entitled

An act relating to transportation facility designations; providing an honorary designation of a certain transportation facility in a specified county; directing the Department of Transportation to erect suitable markers; providing an effective date.

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

Section 1. 98 Points of Light Road designated; Department of Transportation to erect suitable markers.—

(1) That portion of S.R. A1A/Collins Avenue between 87th Terrace and 88th Street in Miami-Dade County is designated as "98 Points of Light Road."

(2) The Department of Transportation is directed to erect suitable markers designating 98 Points of Light Road as described in subsection (1).

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 Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 16, 2022

I respectfully request that **SB 1682**, relating to Transportation Facility Designations/98 Points of Light Road, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jason W. B. Pizzo
Florida Senate, District 38

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 Appropriations

BILL:	SB 1708
INTRODUCER:	Senator Garcia and others
SUBJECT:	Child Welfare
DATE:	February 25, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Cox	CF	**Favorable**
2.	Sneed	Sadberry	AP	**Favorable**

I. Summary:

SB 1708 addresses the needs of certain homeless youth, also referred to as unaccompanied youth. The bill amends provisions for current and former foster youth and certain youth who are experiencing homelessness, including:

- Waiving fees for copies of a birth certificate for certain unaccompanied homeless youth and for youth who aged out of foster care;
- Expanding the requirement for all postsecondary institutions to have campus liaisons to assist students who are current or former foster youth, or who are experiencing homelessness, to succeed in postsecondary education;
- Removing the provision that the Department of Children and Families (DCF) has sole discretion to determine which state colleges and universities offer campus liaisons;
- Expanding the Keys to Independence Program to unaccompanied homeless youth who meet specified requirements;
- Clarifying provisions related to unaccompanied homeless youth who are certified under s. 743.067, F.S., and updating the definition and criteria for certification as an "unaccompanied homeless youth";
- Requiring the district school boards to provide certified unaccompanied homeless youth with a card that contains information on the rights and benefits for these youth, and allows health care providers to accept the card as proof of the youth's status as a certified unaccompanied homeless youth; and
- Directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to evaluate the effectiveness of campus liaisons and of local school districts' delivery of benefits and services available under the federal McKinney-Vento Homeless Assistance Act.

The bill has an indeterminate, yet likely insignificant fiscal impact on state government revenues and expenditures. See Section V. Fiscal Impact Statement.

The bill has an effective date of July 1, 2022.

II. Present Situation:

Homeless Children and Youth

Although the causes for homelessness among children vary, the underlying themes among these causes reveal a strong link between homelessness and broader social issues including family conflict and breakdown and other contributing factors including economic circumstances such as poverty and housing insecurity, racial disparities, and mental health and substance use disorders. Additionally, young people who have had involvement with the child welfare and juvenile justice systems are more likely to become homeless.[1]

Familial conflict, abuse, and disruption, play a large role in children becoming homeless. Children typically enter a state of homelessness as a result of:

- Running away from home;
- Being locked out or abandoned by their parents or guardians; or
- Running from or being emancipated or discharged from institutional or other state care.[2]

Although family conflict also plays a part in adult homelessness, the nexus is more critical for youth since they are, by virtue of their developmental stage in life, still largely financially, emotionally, and, depending on their age, legally dependent upon their families.[3] Rational decision-making, inhibition, planning, and reasoning are still developing in youth and young adults, increasing the likelihood that young people may engage in high-risk behaviors, such as unsafe sexual activity and substance use. Without safe and permanent homes and caring adults, runaway and homeless youth are at even greater risk of engaging in high-risk behaviors or putting themselves in unsafe or risky situations.[4]

The consequences faced by youth experiencing homelessness are enormous and require coordination across the education, child welfare, juvenile justice, and health and human services systems. Runaway and homeless youth are vulnerable to, in part, not having their basic food and shelter needs met, untreated mental health disorders, substance use, sexually transmitted diseases and HIV infection, sexual exploitation and human trafficking, physical victimization, and suicide.[5] According to the National Sexual Violence Resource Center, one in three teens on the street will be lured into prostitution within 48 hours of leaving home.[6] Further, the American Academy of Pediatrics finds youth experiencing homelessness are twice as likely to attempt suicide as their peers who are not homeless.[7] Also, youth who are homeless often experience a

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[1] National Network for Youth, *Youth Homelessness*, available at https://nn4youth.org/learn/youth-homelessness/ (last visited January 28, 2022)(hereinafter cited as "National Network for Youth").
[2] *Id*.
[3] National Conference of State Legislatures (NCSL), *Youth Homelessness Overview, Causes and Consequences of Youth Homelessness*, available at https://www.ncsl.org/research/human-services/homeless-and-runaway-youth.aspx (last visited January 28, 2022).
[4] *Id*.
[5] *Id*.
[6] The National Sexual Violence Resource Center, *Homeless Youth and Sexual Violence*, available at https://www.nsvrc.org/sites/default/files/publications/2019-02/HomelessYouth_Final%20508.pdf (last visited January 28, 2022).
[7] *See* American Academy of Pediatrics, *Studies: Homelessness, self-harm risk factors for suicide*, available at https://publications.aap.org/aapnews/news/13664 (last visited January 28, 2022).

significant disruption in their education due to the transient nature of homelessness. Students experiencing homelessness in Florida have reportedly had increased rates of absenteeism and school discipline and are less likely to demonstrate proficiency in academic subjects.[8]

The Voices of Youth Count from Chapin Hall at the University of Chicago found, in part, that:

- One in 10 young adults ages 18 to 25, and at least one in 30 adolescents ages 13 to 17, experience some form of homelessness unaccompanied by a parent or guardian over the course of a year.
- 29 percent of homeless youth report having substance abuse problems.
- 69 percent of homeless youth report mental health problems.
- 33 percent of homeless youth report having once been a part of the foster care system.
- 50 percent of homeless youth have been in the juvenile justice system, in jail, or detention.
- Black youth face an 83 percent increased risk, and Hispanic youth 33 percent increased risk, than their white peers.
- LGBTQ youth were more than twice as likely to have experienced homelessness.
- The lack of a high school diploma or General Equivalency Diploma is the number one correlate for elevated risk of youth homelessness.[9]

As of January 2020, Florida had an estimated 27,487 experiencing homelessness on any given day, as reported by Continuums of Care[10] to the U.S. Department of Housing and Urban Development (HUD). Of that total, 2,294 were family households, 2,436 were Veterans, 1,331 were unaccompanied young adults,[11] and 5,182 were individuals experiencing chronic homelessness.[12]

Public school data reported to the U.S. Department of Education during the 2019-2020 school year shows that an estimated 79,781 public school students experienced homelessness over the course of the year. Of that total, 6,926 students were unaccompanied homeless students.[13]

Definition of Homeless Children and Youth

Federal law provides a definition for the term "homeless children and youths", which means individuals who lack a fixed, regular, and adequate nighttime residence and includes children and youths who are:

- Sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;

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[8] *See* Shimberg Center for Housing Student, University of Florida and Miami Homes for All, *Homelessness and Education in Florida: Impact on Children and Youth*, pp. 2 and 5, available at http://www.shimberg.ufl.edu/publications/homeless_education_fla171205RGB.pdf (last visited January 28, 2022).
[9] *Id*. *See also* National Network for Youth.
[10] *See* Florida Department of Children and Families (DCF), Continuums of Care and Local Providers of Service, available at https://myflfamilies.com/service-programs/homelessness/local-providers.shtml (last visited February 24, 2022).
[11] This includes ages 18 to 24.
[12] United States Interagency Council on Homelessness, *Florida Homelessness Statistics*, available at https://www.usich.gov/homelessness-statistics/fl (last visited January 28, 2022).
[13] The Florida Department of Education (FDOE), *District Homeless Record Counts*, Final Data as of November 18, 2020, p. 2, available at https://www.fldoe.org/core/fileparse.php/19996/urlt/2019-2020-Homeless-Student-Counts-ADA-COMPLIANT.pdf (last visited January 28, 2022).

- Living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;
- Living in emergency or transitional shelters or are abandoned in hospitals;
- Utilizing for a primary nighttime residence a place that is a public or private but not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- Living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- Migratory children living in circumstances described above.[14]

The term "unaccompanied youth" includes a youth not in the physical custody of a parent or guardian.[15]

Florida law defines the term "children and youths who are experiencing homelessness" to have the same meaning as "homeless children and youths" under federal law and described above.[16]

McKinney-Vento Homeless Assistance Act

The McKinney-Vento Homeless Assistance Act (Act) was the first significant federal legislative response to homelessness, and was passed and signed into law by President Ronald Reagan in 1987.[17] The Act originally consisted of 15 programs providing a range of services to the homeless, including emergency shelter, transitional housing, job training, primary health care, education, and some permanent housing. Title VII of the Act authorizes the Adult Education for the Homeless and the Education of Homeless Children and Youth programs administered by the U.S. Department of Education.[18]

The Education of Homeless Children and Youth Program is designed to address the problems that homeless children and youth have faced in enrolling, attending, and succeeding in school. Under this program, state educational agencies must ensure that each homeless child and youth has equal access to the same free, appropriate public K-12 education as other children and youth. In addition, homeless students may not be separated from the mainstream school environment.[19]

Under the Act, children have the right to:

- Continue to attend the school they last attended before they lost their housing (school of origin), if that is the parent or guardian's choice and is in the child's best interest, or the school which is zoned for their temporary residence.

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[14] 42 U.S.C. s. 11434a. *See also* NCSL, *Homeless Youth Policy Scan*, November 21, 2019, available at https://www.ncsl.org/research/human-services/homeless-youth-policy-scan.aspx (last visited January 28, 2022).
[15] *Id*.
[16] Section 1003.01(12), F.S.
[17] Pub. L. 100-77, Jul. 22, 1987, 101 Stat. 482; 42 U.S.C. s. 11301 et seq. *See also* U.S. Department of Education, *Supporting the Success of Homeless Children and Youths*, available at https://www2.ed.gov/policy/elsec/leg/essa/160315ehcyfactsheet072716.pdf; National Center for Homeless Education, *The McKinney-Vento Homeless Assistance Act*, available at https://nche.ed.gov/legislation/mckinney-vento/ (all sites last visited January 28, 2022).
[18] *Id*.
[19] *See* Florida Department of Education (DOE), *Title IX, Part A: Florida McKinney-Vento Program*, available at https://www.fldoe.org/policy/federal-edu-programs/title-x-homeless-edu-program-hep.stml (last visited January 28, 2022).

- Enroll and attend classes immediately while the school arranges for the transfer of school and immunization records and other required enrollment documents.
- If necessary, enroll and attend classes in the school of origin or zoned school selected by the parent or guardian, while the school and the parent or guardian seek to resolve a dispute over which school is in the best interest of the child.[20]
- Receive transportation to the school of origin, if requested.
- Participate in any school programs and receive any school services for which the student qualifies.[21]

School District Homeless Liaison

The reauthorization of the Act requires school districts to designate a liaison for homeless children and youth. The Florida Department of Education (DOE) has established at least one school district homeless liaison for each of the 67 counties.[22] The liaison must ensure:

- Homeless children and youth, including unaccompanied youth, are identified by school personnel and through coordinated activities with other entities and agencies;
- Homeless children and youth enroll in, and have a full and equal opportunity to succeed in, schools of that local education agency (LEA);
- Homeless families, children, and youth receive educational services for which such families, children, and youth are eligible, including Head Start, Even Start, and other preschool programs administered by the LEA, and referrals to health care services, dental services, mental health services, and other appropriate services;
- The parents or guardians of homeless students are informed of the educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children;
- Public notice of the educational rights of homeless children and youth is disseminated where such children and youth receive services under this Act, such as schools, family shelters, and soup kitchens;
- Enrollment disputes are mediated;
- The parents or guardians of homeless students, or any unaccompanied youth, are fully informed of all transportation services, including transportation to the school of origin, and are assisted in accessing transportation to the school of origin or the school which serves the location where the students currently reside.[23]

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[20] This does not mean any school in the district, only the school of origin or zoned school. *See* St. Johns County School District, Homeless Students Policy, Dispute Process, available at https://www.stjohns.k12.fl.us/homeless/ (last visited January 28, 2022).

[21] Schoolhouse Connection, *The McKinney-Vento Act Quick Reference*, available at https://schoolhouseconnection.org/wp-content/uploads/2020/09/The-McKinney-Vento-Act-Quick-Reference.pdf (last visited January 8, 2022).

[22] The FDOE, *District Liaison List*, available at https://www.fldoe.org/core/fileparse.php/19996/urlt/Title-IX-District-Contact-List-11-05-21-ADA-COMPLIANT.pdf (last visited January 29, 2022)

[23] *See* the FDOE, *Florida State Plan for Funding under the American Rescue Plan Act Education for Homeless Children and Youth (ARP-HCY)*, pp. 9 and 11; available at https://oese.ed.gov/files/2021/12/Florida-ARP-HCY-State-Plan-Final.pdf; *see also* the FDOE, *Technical Assistance Paper 2007-2008 Title X, Part C Education for Homeless Children and Youth*, available at https://info.fldoe.org/docushare/dsweb/Get/Document-4702/TAP-2007-150.pdf (all sites last visited January 29, 2022).

The local homeless liaison is also required to coordinate and collaborate with the state Homeless Education Coordinator and community and school personnel responsible for providing education and related services to homeless students.

Certified Unaccompanied Homeless Youth

Certification

Section 743.067, F.S., provides that a youth who is an unaccompanied homeless youth may become certified as such if he or she is an individual who is 16 years of age or older and is:

- Found by a school district's liaison for homeless children and youths to be an unaccompanied homeless youth eligible for services pursuant to the McKinney-Vento Homeless Assistance Act; or
- Believed to qualify as an unaccompanied homeless youth, as that term is defined in the McKinney-Vento Homeless Assistance Act, by:
  - The director of an emergency shelter program funded by the U.S. Department of Housing and Urban Development;
  - The director of a runaway or homeless youth basic center or transitional living program funded by the United States Department of Health and Human Services; or
  - A continuum of care lead agency.[24]

The State Office on Homelessness in the Department of Children and Families (DCF) has developed a standardized form that must be used by these entities to certify qualifying unaccompanied homeless youth. The front of the form includes the circumstances that qualify the youth; the date the youth was certified; and the name, title, and signature of the certifying individual. The contents of s. 743.067, F.S., is required to be reproduced in its entirety on the back of the form.[25]

Benefits Upon Certification

A certified unaccompanied homeless youth may use the certification to access various benefits, including to:

- Apply at no charge for an identification card issued by the Department of Highway Safety and Motor Vehicles under s. 322.051, F.S.;[26]
- Consent to medical, dental, psychological, substance abuse, and surgical diagnosis and treatment, including preventative care and care by a facility licensed under ch. 394, F.S., ch. 395, F.S., or ch. 397, F.S.,[27] and certain forensic medical examination,[28] for:
  - Himself or herself; or

[24] Section 743.067(1), F.S. The certification can be conducted by each of these entities designee.
[25] Section 743.067(2)(a), F.S.
[26] Section 743.067(2)(b), F.S.
[27] Chapter 394, F.S., governs the provision of substance abuse and mental health services; ch. 395, F.S., provides for the licensing and regulation of hospitals; and ch. 397, F.S., provides specifically for substance abuse services.
[28] This provision is applicable to the purpose of investigating any felony offense under ch. 784, F.S. (relating to assault, battery, culpable negligence), ch. 787, F.S.(relating to kidnapping, custody offenses, human trafficking, and smuggling) ch 794, F.S., (relating to sexual battery), ch. 800, F.S.,(relating to lewdness and indecent exposure) or ch. 827, F.S., (relating to child abuse).

  - His or her child, if the certified unaccompanied homeless youth is unmarried, is the parent of the child, and has actual custody of the child;[29] and
- Petition the court to have the disabilities of nonage removed and become an emancipated minor who has the legal capacity to act as an adult, be in control of his or her affairs, and be free of the legal control and custody of his or her parents.[30]

A health care provider may accept a copy of the written certificate as proof of the minor's status as a certified unaccompanied homeless youth and may keep a copy of the certificate in the youth's medical file to assist with medical treatment.[31]

Birth Certificates

The Florida Department of Health (DOH), Office of Vital Statistics, maintains all vital records for Florida. Under current law, homeless children are not specifically given the ability to obtain their birth certificates. Florida law provides that certified copies of the original birth certificate or a new or amended certificate, or affidavits thereof, are confidential and exempt from the provisions of s. 119.07(1), F.S.,[32] and, upon receipt of a request and payment of the fee prescribed in s. 382.0255, F.S., shall be issued only as authorized by the DOH and in the form prescribed by the DOH, and only, in relevant part, to the registrant, if of legal age, is a certified homeless youth, or is a minor who has had the disabilities of nonage removed under s. 743.01, F.S., or s. 743.015, F.S..[33]

The Florida DOH is entitled to fees for providing copies of certain vital records. The fees assessed must be the minimum fees cited. The fees established by rule must be sufficient to meet the cost of providing the service. All fees are required to be paid by the person requesting the record, are due and payable at the time services are requested, and are nonrefundable, except that, when a search is conducted and no vital record is found, any fees paid for additional certified copies shall be refunded.

The DOH is authorized to waive all or part of the fees required for any government entity. Further, the DOH is required to waive all fees for a certified copy of a birth certificate issued for purposes of an inmate acquiring a state identification card before release pursuant to s. 944.605(7), F.S., and for a juvenile offender who is in the custody or under the supervision of the Department of Juvenile Justice and receiving services under s. 985.461, F.S.[34]

[29] Section 743.067(3)b), F.S. However, this provision is notwithstanding s. 394.4625(1), F.S., relating to voluntary admissions under the Baker Act.
[30] Section 743.067(3)(a), F.S. A certified unaccompanied homeless youth that petitions the circuit court to have the disabilities of nonage removed is not required to prepay costs and fees as provided in s. 57.081, F.S., and the court must advance the cause on the calendar. *See* ch. 743, F.S., for when a minor may petition a court to have the disabilities of nonage removed.
[31] Section 743.067(2)(c), F.S.
[32] Section 382.025(1), F.S.
[33] Section 382.025, F.S.
[34] Section 382.0255(3), F.S.

Keys to Independence Program

In 2014, the Legislature required the Department of Children and Families (DCF) to establish a program to pay the cost of driver education, licensure and other costs incidental to licensure, and motor vehicle insurance for children in out-of-home care who have successfully completed a driver education program.[35] The program is known as the Keys to Independence program.

This program was established in direct response to recognizing the barriers that are created for a child in out-of-home care as a result of not obtaining a driver license and the cost prohibition that many such children faced to obtain motor vehicle insurance and licensure.

In 2021, the Legislature expanded the Keys to Independence program to include children who were in licensed care when reaching 18 years of age and are currently receiving postsecondary education services and support under s. 409.1451(2), F.S.[36] The DCF was appropriated $2,483,938 in recurring general revenue funds in the 2021-2022 fiscal year for the Keys to Independence program.

The program began in December 2017. As of December 31, 2021 there have been:
- 6,845 enrolled applicants;
- 1902 learner's permits issued; and
- 1020 driver's licenses issued.[37]

III. Effect of Proposed Changes:

The bill makes a number of changes to the laws related to current and former foster children and young adults, children and young adults who are experiencing homelessness, and certified unaccompanied homeless youth.

Birth Certificate Fees

The bill amends s. 382.055, F.S., expanding the persons who must have the fees for a certified copy of a birth certificate waived by the DOH to include unaccompanied homeless youth certified under s. 743.067, F.S., and young adults who are, or were at the time of turning 18 years of age, in the custody of the DCF.

Unaccompanied Homeless Youth

The bill amends s. 743.067, F.S., clarifying provisions related to the term "unaccompanied homeless youth". The bill updates the definition to specify that the youth is not in the physical custody of a parent or guardian, which includes a youth who has run away from home, who has been forced to leave his or her home, or whose parents have left the area and left the youth behind.

[35] Section 409.1454, F.S. Chapter 2014-166, L.O.F.
[36] Chapter 2021-169, L.O.F.
[37] Maria Solon, *Keys to Independence Program Monthly Report*, All Youth Life of Program Tab, December 2021 (on file with the Senate Committee on Children, Families and Elder Affairs).

The bill provides that a certified unaccompanied homeless youth may receive a certified copy of his or her birth certificate at no charge under s. 382.055, F.S., and clarifies that the medical provider may accept the written certificate or the below described school district issued card as proof of the youth's ability to consent to his or her medical care.

The bill also clarifies the specific categories of medical and other care for which the youth may consent, including behavioral health care services that include both psychological counseling and treatment, psychiatric treatment, and substance abuse prevention and treatment services. In addition, the bill amends s. 1003.01, F.S., creating a definition of the term "unaccompanied homeless youth" in the Florida Education Code to provide consistency for the school liaisons that certify such youth.

Keys to Independence Program

The bill amends s. 409.1454, F.S., expanding the eligibility for the Keys to Independence program to include an unaccompanied homeless youth certified under s. 743.067, F.S., who is a citizen of the United States or legal resident of Florida and who is:

- Completing secondary education;
- Employed at least part time;
- Attending a postsecondary education program at least part time; or
- Precluded from full-time work or education due to a disability.

District School Board Issued Card

The bill amends s. 1001.42, F.S., requiring the district school boards to provide unaccompanied homeless youth certified pursuant to s. 743.067, F.S., a card that is similar in size to the student identification card issued to students in the district that contains specified information on the rights and benefits for these youth. Specifically,

- The front of the card must include the circumstances that qualify the youth, the date the youth was certified and the name, title and signature of the certifying individual. This information is obtained from the standardized form developed by the DCF.
- The back of the card must include the provisions of s. 743.067, F.S., that provide authority to the certified unaccompanied homeless youth to consent to medical and other care for himself or herself or for his or her child if the certified youth is unmarried, is the parent of the child, and has custody of the child.

Postsecondary Education Liaisons

The bill amends s. 409.1452, F.S., expanding the use of postsecondary education campus liaisons to include students who are experiencing homelessness in addition to serving current or former foster children and young adults to assist such students with achieving success in postsecondary education. The bill also revises the term for the position from "campus coaches" to "campus liaisons" and removes a provision that the DCF has the sole discretion to determine which state colleges and universities offer campus liaison positions.

OPPAGA Study

The bill also requires the OPPAGA to conduct a study to evaluate the effectiveness of campus liaisons provided under s. 409.1452, F.S., and of the local school districts' delivery of benefits and services required under the McKinney-Vento Homeless Assistance Act.

Specifically, the study must include:

- Current use of liaisons by all colleges and universities, the number of children and young adults served by such liaisons, the type and prevalence of the services requested by such children and young adults, and the experiences of the students served by the liaisons.
- Local school districts' delivery of benefits and services to unaccompanied homeless youth eligible for services under s. 743.067, F.S., and the Act and school districts' adherence to provisions of the Act, such as the:
  - Ability for an unaccompanied homeless youth to remain in his or her school of origin for the duration of the period the youth is experiencing homelessness and until the end of an academic year in which the youth obtains permanent housing, if remaining in the school of origin is determined to be in the youth's best interest.
  - Extent to which school district liaisons make best interest determinations by considering specific student-centered factors when determining the best school for an unaccompanied homeless youth.
  - Ability of unaccompanied homeless youth to receive transportation to the school of origin from the applicable school district.
  - Prompt enrollment of an unaccompanied homeless youth in a school or classes while the school of origin arranges for the transfer of school and immunization records and other required enrollment documents to ensure compliance with s. 1003.21(1)(f), F.S.
  - Ability of an unaccompanied homeless youth to participate in all available education programs and extracurricular activities and receive any school services for which the youth meets all relevant eligibility criteria.

Further, the study must include recommendations for any changes needed to ensure all eligible children and young adults who seek such support receive services, improve the outcomes of children and young adults who receive services and benefits from campus liaisons or under the Act and ensure campus liaisons in local school districts and postsecondary institutions are qualified to provide adequate information and support and are knowledgeable about the relevant programs and benefits that may be accessed by the children and young adults they serve.

The bill requires the OPPAGA to consult with the DCF, the Board of Governors of the State University System, the Florida College System, the FDOE, local school districts, and any other relevant stakeholders including, but not limited to, students eligible for the assistance of a liaison in conducting the study. The bill requires a report to be provided to the President of the Senate and the Speaker of the House of Representatives by December 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,

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:

Currently, the Department of Children and Families DCF has $2,483,938 in recurring funding for the Keys to Independence program to provide for current and former foster youth who are participating in the program. Although SB 1708 expands the Keys to Independence program to include eligible unaccompanied homeless youth, the number of youth that may actually access services through the program is indeterminate at this time.

The bill also waives the Florida Department of Health (DOH) Bureau of Vital Statistics birth certificate fees for certain unaccompanied homeless youth. This is expected to have an insignificant fiscal impact on the DOH revenues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill amends ss. 382.0255, 409.1452, 409.1454, 743.067, 1001.42, and 1003.01 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 Garcia

37-01000B-22 20221708__

A bill to be entitled

An act relating to child welfare; amending s. 382.0255, F.S.; requiring the Department of Health to waive fees for certified copies of birth certificates issued to certain unaccompanied homeless youth and young adults; amending s. 409.1452, F.S.; revising requirements for required collaboration among the Board of Governors, the Florida College System, and the Department of Education in working with the Department of Children and Families to assist specified children and young adults; amending s. 409.1454, F.S.; revising legislative findings; revising eligibility and requirements for a certain driver education, licensure, and insurance program to include certain unaccompanied homeless youth; revising program operation and administration requirements; amending s. 743.067, F.S.; revising the definition of the term "unaccompanied homeless youth"; specifying certification criteria for unaccompanied homeless youth; authorizing certain unaccompanied homeless youth to use a specified form to receive birth certificates; authorizing health care providers to accept such form for certain purposes; authorizing certain unaccompanied homeless youth to consent to specified medical and other care; amending s. 1001.42, F.S.; requiring district school boards to provide cards that contain specified information to certain unaccompanied homeless youth; specifying requirements for the card; amending s. 1003.01, F.S.; revising the

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definition of the term "children and youths who are experiencing homelessness"; defining the term "certified unaccompanied homeless youth"; requiring the Office of Program Policy Analysis and Government Accountability to conduct a specified study; specifying the scope of the study; requiring the study to include specified recommendations; requiring the office to consult with specified entities; requiring the office to submit a report on the study to the Legislature by a specified date; providing an effective date.

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

Section 1. Subsection (3) of section 382.0255, Florida Statutes, is amended to read:

382.0255 Fees.—

(3) Fees must ~~shall~~ be established by rule. However, until rules are adopted, the fees assessed pursuant to this section must ~~shall~~ be the minimum fees cited. The fees established by rule must be sufficient to meet the cost of providing the service. All fees must ~~shall~~ be paid by the person requesting the record, are due and payable at the time services are requested, and are nonrefundable, except that, when a search is conducted and no vital record is found, any fees paid for additional certified copies shall be refunded. The department may waive all or part of the fees required under this section for any government entity. The department shall waive all fees required under this section for a certified copy of a birth

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

certificate issued for an unaccompanied homeless youth certified under s. 743.067; for a young adult who is, or was at the time he or she reached 18 years of age, in the custody of the Department of Children and Families; for purposes of an inmate acquiring a state identification card before release pursuant to s. 944.605(7); and for a juvenile offender ~~who is~~ in the custody or under the supervision of the Department of Juvenile Justice and receiving services under s. 985.461.

Section 2. Section 409.1452, Florida Statutes, is amended to read:

409.1452 Collaboration with Board of Governors, Florida College System, and Department of Education to assist children and young adults who have been or are in foster care or are experiencing homelessness. ~~Effective July 1, 2013,~~ The Department of Children and Families shall work in collaboration with the Board of Governors, the Florida College System, and the Department of Education to help address the need for a focused and consistent campus-based ~~comprehensive~~ support structure ~~in the academic arena~~ to assist children and young adults who have been or continue to remain in the foster care system or who are experiencing homelessness to succeed in postsecondary education ~~in making the transition from a structured care system into an independent living setting~~. The State University System of Florida and the Florida College System shall provide postsecondary educational campus liaison ~~coaching~~ positions that will be integrated into Florida College System institutions' and university institutions' general support services structure to provide ~~current and former foster care~~ children and young adults who have been or continue to remain in the foster care system or

who are experiencing homelessness with dedicated, on-campus support. ~~The Department of Children and Families has the sole discretion to determine which state college or university will offer a campus coaching position, based on departmental demographic data indicating greatest need.~~ These campus liaison ~~coaching~~ positions must ~~shall~~ be employees of the selected educational institutions, and focused on supporting children and young adults who have been or continue to remain in the foster care system or who are experiencing homelessness. The Chancellors of the Florida College System and the Board of Governors shall report annually to the Department of Children and Families specific data, subject to privacy laws, about the children and young adults served by the campus liaisons ~~coaches~~, including academic progress, retention rates for students enrolled in the program, financial aid requested and received, and information required by the National Youth in Transition Database.

Section 3. Section 409.1454, Florida Statutes, is amended to read:

409.1454 Motor vehicle insurance and driver licenses for children in care and certified unaccompanied homeless youth.—

(1) The Legislature finds that the costs of driver education, licensure and costs incidental to licensure, and motor vehicle insurance for a child in out-of-home care or certain unaccompanied homeless youth certified under s. 743.067 after such child obtains a driver license create an additional barrier to engaging in normal age-appropriate activities and gaining independence and may limit opportunities for obtaining employment and completing educational goals. The Legislature

also finds that the completion of an approved driver education course is necessary to develop safe driving skills.

(2) To the extent that funding is available, the department shall establish a program to pay the cost of driver education, licensure and other costs incidental to licensure, and motor vehicle insurance for a child who has completed a driver education program and who is: ~~children~~

(a) In out-of-home care; or

(b) Certified under s. 743.067 as an unaccompanied homeless youth and who is a citizen of the United States or legal resident of this state ~~who have successfully completed a driver education program~~.

(3) If a caregiver, or an individual or not-for-profit entity approved by the caregiver, adds a child to his or her existing insurance policy, the amount paid to the caregiver or approved purchaser may not exceed the increase in cost attributable to the addition of the child to the policy.

(4) Payment must ~~shall~~ be made to eligible recipients in the order of eligibility until available funds are exhausted. If a child determined to be eligible reaches permanency status or turns 18 years of age, the program may pay for that child to complete a driver education program and obtain a driver license for up to 6 months after the date the child reaches permanency status or 6 months after the date the child turns 18 years of age. A child may be eligible to have the costs of and incidental to licensure paid if he or she demonstrates that such costs are creating barriers to obtaining employment or completing educational goals, if the child meets any of the following criteria:

(a) Is continuing in care under s. 39.6251;~~, or who~~

(b) Was in licensed care when the child reached 18 years of age and is currently receiving postsecondary education services and support under s. 409.1451(2); or

(c) Is an unaccompanied homeless youth certified under s. 743.067 who is a citizen of the United States or legal resident of this state and is:

1. Completing secondary education;

2. Employed at least part time;

3. Attending any postsecondary education program at least part time; or

4. Has a disability that precludes full-time work or education~~, may be eligible to have the costs of licensure and costs incidental to licensure paid if the child demonstrates that such costs are creating barriers for obtaining employment or completing educational goals~~.

(5) The department shall contract with a not-for-profit entity whose mission is to support youth aging out of foster care to develop procedures for operating and administering the program, including, but not limited to:

(a) Determining eligibility, including responsibilities for the child and caregivers.

(b) Developing application and payment forms.

(c) Notifying eligible children, caregivers, group homes, ~~and~~ residential programs, local educational agency liaisons for homeless children and youth, and governmental or nonprofit agencies that provide services to homeless children or youth of the program.

(d) Providing technical assistance to lead agencies,

providers, group homes, and residential programs to support removing obstacles that prevent children in foster care from driving.

(e) Publicizing the program, engaging in outreach, and providing incentives to youth participating in the program to encourage the greatest number of eligible children to obtain driver licenses.

Section 4. Section 743.067, Florida Statutes, is amended to read:

743.067 Certified unaccompanied homeless youths.—

(1) DEFINITION.—For purposes of this section, an "unaccompanied homeless youth" is an individual who is 16 years of age or older and is not in the physical custody of a parent or guardian, including a youth who has run away from home, who has been forced to leave his or her home, or whose parents have left the area and left the youth behind.

(2) CERTIFICATION.—An unaccompanied homeless youth may become certified if he or she is:

(a) Found by a school district's liaison for homeless children and youths to be an unaccompanied homeless youth eligible for services pursuant to the McKinney-Vento Homeless Assistance Act, 42 U.S.C. ss. 11431-11435; or

(b) Believed to qualify as an unaccompanied homeless youth, as that term is defined in the McKinney-Vento Homeless Assistance Act, by:

1. The director of an emergency shelter program funded by the United States Department of Housing and Urban Development, or the director's designee;

2. The director of a runaway or homeless youth basic center

or transitional living program funded by the United States Department of Health and Human Services, or the director's designee; or

3. A continuum of care lead agency, or its designee.

(3) ~~(2)~~ PROOF OF CERTIFICATION.—

(a) The State Office on Homelessness within the Department of Children and Families shall develop a standardized form that must be used by the entities specified in subsection (2) ~~(1)~~ to certify qualifying unaccompanied homeless youth. The front of the form must include the circumstances that qualify the youth; the date the youth was certified; and the name, title, and signature of the certifying individual. This section must be reproduced in its entirety on the back of the form.

(b) A certified unaccompanied homeless youth may use the completed form to:

1. Apply at no charge for an identification card issued by the Department of Highway Safety and Motor Vehicles pursuant to s. 322.051(9).

2. Receive a certified copy of his or her birth certificate at no charge under s. 382.0255.

(c) A health care provider may accept the completed form or the card issued under s. 1001.42 ~~written certificate~~ as proof of the minor's status as a certified unaccompanied homeless youth and may keep a copy of the form or card ~~certificate~~ in the youth's medical file.

(4) ~~(3)~~ REMOVAL OF DISABILITIES OF NONAGE.—A certified unaccompanied homeless youth may~~:~~

~~(a)~~ petition the circuit court to have the disabilities of nonage removed under s. 743.015. The youth shall qualify as a

person not required to prepay costs and fees as provided in s. 57.081. The court shall advance the cause on the calendar.

(5)~~(b)~~ MEDICAL AND OTHER CARE.—Notwithstanding s. 394.4625(1), a certified unaccompanied homeless youth may consent to medical care;~~,~~ dental care;~~,~~ behavioral health care services, including psychological counseling and treatment, psychiatric treatment, and substance abuse prevention and treatment services;~~,~~ and surgical diagnosis and treatment, including preventative care and care by a facility licensed under chapter 394, chapter 395, or chapter 397 and any forensic medical examination for the purpose of investigating any felony offense under chapter 784, chapter 787, chapter 794, chapter 800, or chapter 827, for:

(a)~~1.~~ Himself or herself; or

(b)~~2.~~ His or her child, if the certified unaccompanied homeless youth is unmarried, is the parent of the child, and has actual custody of the child.

(6)~~(4)~~ CONSTRUCTION.—This section does not affect the requirements of s. 390.01114.

Section 5. Present subsection (28) of section 1001.42, Florida Statutes, is redesignated as subsection (29), and a new subsection (28) is added to that section, to read:

1001.42 Powers and duties of district school board.—The district school board, acting as a board, shall exercise all powers and perform all duties listed below:

(28) UNACCOMPANIED HOMELESS YOUTH.—Provide to each student who is an unaccompanied homeless youth certified under s. 743.067 a card that includes information on the rights and benefits for such youth, as well as the contact information for

the school district's liaison for homeless children and youths. The card must be similar in size to the student identification card issued to students in the district and include all of the following information:

(a) On the front of the card, the following information from the standardized form developed by the Department of Children and Families under s. 743.067(3):

1. The circumstances that qualify the youth.

2. The date the youth was certified.

3. The name, title, and signature of the certifying individual.

(b) On the back of the card, the following statement:

Section 743.067, Florida Statutes, provides that this certified youth may consent to medical care; dental care; behavioral health care services, including psychological counseling and treatment, psychiatric treatment, and substance abuse prevention and treatment services; and surgical diagnosis and treatment, including preventative care and care by a facility licensed under chapter 394, chapter 395, or chapter 397 and any forensic medical examination for the purpose of investigating any felony offense under chapter 784, chapter 787, chapter 794, chapter 800, or chapter 827, for himself or herself or his or her child, if the certified youth is unmarried, is the parent of the child, and has actual custody of the child.

Section 6. Subsection (12) of section 1003.01, Florida Statutes, is amended, and subsection (17) is added to that section, to read:

1003.01 Definitions.—As used in this chapter, the term:

(12) "Children and youths who are experiencing homelessness," for programs authorized under subtitle B, Education for Homeless Children and Youths, of Title VII of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. ss. 11431 et seq., means children and youths who lack a fixed, regular, and adequate nighttime residence, and includes:

(a) Children and youths ~~who are~~ sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, travel trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals~~; or are awaiting foster care placement~~.

(b) Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings.

(c) Children and youths ~~who are~~ living in cars, parks, public spaces, abandoned buildings, bus or train stations, or similar settings.

(d) Migratory children ~~who are~~ living in circumstances described in paragraphs (a)-(c).

(17) "Certified unaccompanied homeless youth" means a youth certified as an unaccompanied homeless youth pursuant to s. 743.067.

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

Section 7. (1) The Office of Program Policy Analysis and Government Accountability (OPPAGA) shall conduct a study to evaluate the effectiveness of campus liaisons provided pursuant to s. 409.1452, Florida Statutes, and of local school districts' delivery of benefits and services required under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. ss. 11431-11435. The study's scope must include, but need not be limited to:

(a) Current use of liaisons by all colleges and universities, the number of children and young adults served by such liaisons, the type and prevalence of the services requested by such children and young adults, and the experiences of the students served by the liaisons.

(b) Local school districts' delivery of benefits and services to unaccompanied homeless youth eligible for services under s. 743.067, Florida Statutes, and the McKinney-Vento Homeless Assistance Act and school districts' adherence to provisions of the act, such as the:

1. Ability for an unaccompanied homeless youth to remain in his or her school of origin for the duration of the period the youth is experiencing homelessness and until the end of an academic year in which the youth obtains permanent housing, if remaining in the school of origin is determined to be in the youth's best interest.

2. Extent to which school district liaisons make best interest determinations by considering specific student-centered factors when determining the best school for an unaccompanied homeless youth.

3. Ability of unaccompanied homeless youth to receive transportation to the school of origin from the applicable

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school district.

4. Prompt enrollment of an unaccompanied homeless youth in a school or classes while the school of origin arranges for the transfer of school and immunization records and other required enrollment documents to ensure compliance with s. 1003.21(1)(f), Florida Statutes.

5. Ability of an unaccompanied homeless youth to participate in all available education programs and extracurricular activities and receive any school services for which the youth meets all relevant eligibility criteria.

(2) The study must include recommendations for any changes needed to:

(a) Ensure all eligible children and young adults who seek such support receive services.

(b) Improve the outcomes of children and young adults who receive services and benefits from campus liaisons or under the McKinney-Vento Homeless Assistance Act.

(c) Ensure campus liaisons in local school districts and postsecondary institutions are qualified to provide adequate information and support and are knowledgeable about the relevant programs and benefits that may be accessed by the children and young adults they serve.

(3) In conducting the study, OPPAGA shall consult with the Department of Children and Families, the Board of Governors of the State University System, the Florida College System, the Department of Education, local school districts, and any other relevant stakeholders, including, but not limited to, students eligible for the assistance of a liaison.

(4) OPPAGA shall submit a report on its findings to the

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President of the Senate and the Speaker of the House of Representatives by December 1, 2022.

Section 8. This act shall take effect July 1, 2022.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1798
INTRODUCER:	Appropriations Committee; Criminal Justice Committee; and Senator Book
SUBJECT:	Sexually Related Offenses
DATE:	March 2, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	**Fav/CS**
2.	Moody	Cox	CF	**Favorable**
3.	Atchley	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1798 creates section 836.13, Florida Statutes, to provide criminal and civil penalties for persons who promote certain altered sexual depictions. Colloquially known as "deep fakes," these images often depict individuals engaging in sexual behavior that they did not engage in.

Specifically, this bill provides that a person commits a third degree felony when he or she willfully and maliciously promotes any altered sexual depiction of an identifiable person, without the consent of the identifiable person, and who knows or reasonably should have known that such visual depiction was an altered sexual depiction.

The bill also creates section 836.14, Florida Statutes, to provide criminal and civil penalties relating to theft or unauthorized promotion of a sexually explicit image. A person commits a third degree felony when he or she:

- Commits a theft of a sexually explicit image with the intent to promote such image; or
- Willfully possesses with the intent to promote a sexually explicit image that he or she knows or should have known was obtained in violation of the offense described above.

The bill provides a higher penalty, a second degree felony, when a person willfully promotes for the purpose of pecuniary or any type of financial gain a sexually explicit image of an identifiable person without that person's consent.

Additionally, the felony offenses created in this bill are ranked in the offense severity ranking chart of the Criminal Punishment Code.

The bill, throughout the Florida Statutes, replaces the term "child pornography," with "child sexual abuse material." The bill expands this term to include any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor engaged in sexual conduct.

The bill further amends s. 827.071, F.S., to replace the phrase "any sexual conduct by a child," with the term "child sexual abuse material." The term "child sexual abuse material," includes images depicting any sexual conduct by a child.

The bill amends s. 775.0847, F.S., to replace the term "movie" with "motion picture, film, video, or computer-generated motion picture, film, or video," for purposes of enhancing specified offenses relating to child sexual abuse material or obscenity.

The bill increases the minimum monetary damages from $5,000 to $10,000 that a victim of sexual cyberharassment may receive as a result of a civil action.

The bill provides that a law enforcement officer may arrest without a warrant any person who he or she has probable cause to believe possesses a child-like sex doll.

The bill amends s. 828.126, F.S., to remove the term "sexual conduct" and revise the term "sexual contact with an animal," to encompass acts previously defined under "sexual conduct."

The bill amends the prohibited conduct to include that a person may not knowingly: advertise, offer, solicit, or accept an offer of an animal for the purpose of sexual contact with such animal; or film, distribute, or possess any pornographic image or video of a person and an animal engaged in any prohibited acts related to sexual activities involving an animal.

The bill increases the penalty for sexual contact with an animal from a first degree misdemeanor to a third degree felony, and provides that the court must issue an order prohibiting a convicted person from specified behaviors that place them in close proximity to an animal. The bill also provides exceptions from criminal liability. This offense is ranked in the offense severity ranking chart of the Criminal Punishment Code.

Additionally, the bill provides conforming cross-references.

The bill may have a positive indeterminate fiscal impact (unquantifiable increase in prison beds and jail beds) on the Department of Corrections and local jails. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2022.

II. Present Situation:

With technology advancing at a rapid rate, states and the federal government are attempting to craft laws to address issues arising as a result of such technology. Many of these issues relate to the creation or dissemination of sexually explicit material including, nonconsensual pornography of adults, sexually explicit deep fake images of adults, and morphed child pornography.

Deep Fakes

Deep fakes are realistic images or videos that are created using artificial intelligence (AI) and often depict a real person saying something they did not say, or engaging in a behavior they did not engage in. The use of AI to generate a deep fake image is causing concern because the results are increasingly realistic, rapidly created, and inexpensively made. Software to create such images is often free and publicly available.[1]

While there may be beneficial uses, deep fake technology may also pose a harm to individuals. Deep fakes may be used to spread false information, or used to embarrass, humiliate, exploit, or sabotage others.[2]

Legislation in Other States

Several states provide criminal or civil liability for creating or distributing deep fake images. The states that have enacted laws relating to deep fake images include: Virginia,[3] Hawaii,[4] California,[5] and Texas.[6]

Currently, no states completely ban the creation or distribution of all deep fakes. A complete ban of such images would likely run afoul of constitutional protections under the First Amendment. However, certain categories of speech, including defamation, fraud, true threats, and the imminent-and likely incitement of violence, do not receive protections under the First Amendment.[7] Some deep fakes will likely fall into one of those categories and therefore may be regulated.[8]

The potential for harm stemming from deep fake images is often explored in the context of nonconsensual deep fake pornography. "The core issue of nonconsensual pornography is consent, and deep fake pornography adds an additional layer because the individual depicted did not actually engage in the sexual behavior [he or she] is depicted as doing."[9]

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[1] In Focus, Congressional Research Service, *Deep Fakes and National Security*, June 8, 2021, available at https://crsreports.congress.gov/product/pdf/IF/IF11333 (last visited February 28, 2022).
[2] California Law Review, *Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security*, Bobby Chesney and Danielle Citron, 2019 Vol. 107:1753, p. 1771-74, (on file with Senate Criminal Justice Committee).
[3] Section 18.2-386.2., V.A.C.
[4] Section 711-1110.9., H.R.S.
[5] Section 1708.86., C.C.C.
[6] Section 255.004, V.T.C.A.
[7] *United States v. Alvarez*, 567 U.S. 709 (2012).
[8] California Law Review, *Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security*, Bobby Chesney and Danielle Citron, 2019 Vol. 107:1753, p. 1791, (on file with Senate Criminal Justice Committee).
[9] Northwestern University Law Review, *Deepfake Privacy: Attitudes and Regulation*, Mathew B. Kugler and Carly Pace, 2021Vol 116:611, p. 624-25, (on file with Senate Criminal Justice Committee).

Nonconsensual Pornography

Many states, including Florida, ban nonconsensual pornography, otherwise known as "revenge porn." Such bans have been consistently upheld by the courts.[10] The courts have found a compelling state interest in protecting individuals from the nonconsensual dissemination of private sexual images. "Those who are unwillingly exposed to their friends, family, bosses, co-workers, teachers, fellow students, or random strangers on the internet are often deeply and permanently scarred by the experience."[11]

Section 784.049, F.S., provides that sexual cyberharassment means to publish to an Internet website or disseminate through electronic means to another person a sexually explicit image of a person that contains or conveys the personal identification information of the depicted person without the depicted person's consent, contrary to the depicted person's reasonable expectation that the image would remain private, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person.

It is a first degree misdemeanor[12] to willfully and maliciously sexually cyberharass another person. A second or subsequent violation is a third degree felony.[13] In addition to criminal penalties, an aggrieved person may initiate a civil action to obtain injunctive relief, a minimum of $5,000 in monetary damages, and reasonable attorney fees and costs.[14]

There is currently no state law prohibiting the unlawful procuring, or possession of a sexually explicit image with the intent of selling or disseminating such image. Such crimes in Florida may only be charged under current theft[15] laws if applicable.

Child Pornography

Generally, the First Amendment does not protect child pornography. In *New York v. Ferber*,[16] the Supreme Court of the United States recognized that states have a compelling interest in safeguarding the physical and psychological well-being of minors and in preventing their sexual exploitation and abuse. The Court noted that it was "unlikely that visual depictions of children . . . lewdly exhibiting their genitals would often constitute an important and necessary part of a literary performance or scientific or educational work."[17]

The use of AI has also been used to create child pornography, sometimes referred to as "morphing." The Federal Government prohibits such images, however, the Supreme Court of the

[10] *See Minnesota v. Casillas*, 952 N.W. 2d 629, 642 (Minnesota 2020); *Vermont v. VanBuren,* 210 Vt. 293 (Vermont 2019); *Illinois v. Austin*, 2019 IL 123910, (Illinois 2019).
[11] *Minnesota v. Casillas*, 952 N.W. 2d 629, 642 (Minnesota 2020).
[12] 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.
[13] Section 784.049(3), F.S. A third degree felony is punishable by up to five years imprisonment and up to a $5,000 fine. Sections 775.082 and 775.083, F.S.
[14] Section 784.049(5), F.S.
[15] *See* ch. 812, F.S.
[16] *New York v. Ferber*, 458 U.S. 747 (1982).
[17] *Id*. at 763.

United States has found that the child or minor depicted in the image must be a real minor for such bans to pass constitutional muster.[18] Under these principles, states have constitutionally been able to criminalize the possession, distribution, etc., of child pornography. However, the constitutionality of criminalizing such acts is less clear when the images at issue are morphed pornography.

Child Pornography Prevention Action of 1996

In 1996, Congress passed the Child Pornography Prevention Action of 1996 (CPPA),[19] which created a definition of "child pornography." This criminalized, for the first time, acts relating to morphed child pornography. Under the CPPA, "child pornography" was defined as:

> (8) Any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct,[20] where:
> (A) The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
> (B) Such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct (i.e., *virtual child pornography – created without using an actual child*);
> (C) Such visual depiction has been created, adapted, or modified to appear that an identifiable minor[21] is engaging in sexually explicit conduct (i.e., *morphed child pornography*); or
> (D) Such visual depiction is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct.[22]

In 2002, the United States Supreme Court decided *Ashcroft v. Free Speech Coalition*,[23] a case in which a California trade association for the adult-entertainment industry challenged section 2256(8)(B) of the CPPA as unconstitutionally overbroad. As noted above, section 2256(8)(B) made it a crime to possess or distribute images depicting a child or what appears to be a child, engaging in sexually explicit conduct (i.e., virtual child pornography).[24]

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[18] *See Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).
[19] Pub. L. No. 104-208, s. 121.
[20] The term "sexually explicit conduct" was defined as actual or simulated sexual intercourse (including genital-genital, oral-genital, anal-genital, or oral-anal) whether between persons of the same or opposite sex; bestiality; masturbation; sadistic or masochistic abuse; or lascivious exhibition of the genitals or pubic area of any person. 18 U.S.C. s. 2256(2) (1996 ed.).
[21] The term "identifiable minor" was defined as a person who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature, and: who was a minor at the time the visual depiction was created, adapted, or modified; or whose image as a minor was used in creating, adapting, or modifying the visual depiction. The term was not be construed to require proof of the actual identity of the identifiable minor. 18 U.S.C. s. 2556(9) (1996 ed.).
[22] 18 U.S.C. s. 2556(8) (1996 ed.).
[23] 535 U.S. 234 (2002).
[24] 18 U.S.C. s. 2556(8) (1996 ed.).

The Court held that the "speech" criminalized in the challenged provision of the CPPA violated the First Amendment because it extended the federal prohibition against child pornography to sexually explicit images that appeared to depict minors but were produced without using any real children.[25] The Court decided that by prohibiting child pornography that did not depict an actual child, section 2256(8)(B) of the CPPA "abridged the freedom to engage in a substantial amount of lawful speech" and was therefore overbroad and unconstitutional.[26]

The *Ashcroft* decision did not specifically address the constitutionality of 18 U.S.C. 2256(8)(C) (prohibiting *morphed* child pornography), it did note, in dictum, that "[a]lthough morphed images may fall within the definition of virtual child pornography, they implicate the interests of real children. . ."[27] Courts have taken this dictum to suggest that the *Ashcroft* court would have deemed morphed child pornography as not protected by the First Amendment.[28]

Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act (Protect Act)

Congress attempted to remedy the constitutional issues raised in *Ashcroft* by passing the "Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act" (Protect Act) in 2003.[29] The Protect Act, in part, narrowed the definition of "virtual" child pornography in section (8)(B) of the CPPA to include virtual or computer-generated images that are "indistinguishable from" images of actual minors engaging in sexually explicit conduct.[30]

Notably, the definition of "morphed" child pornography contained in section 2256(8)(C) remained unchanged between the CPPA and the Protect Act.

Case Law since the Passage of the Protect Act

To date, the federal statutes relating to morphed child pornography have been upheld.[31] In *United States v. Bach*,[32] the defendant was convicted of possessing morphed child pornography. The image at issue showed a young nude boy sitting in a tree, grinning, with his pelvis tilted upward, his legs opened wide, and a full erection.[33] The photograph of a well-known child entertainer's head had been "skillfully inserted onto the photograph of the nude boy so that the resulting image appeared to be a nude picture of [the child entertainer] sitting in the tree."[34]

The defendant appealed arguing that his conviction was invalid because the definition of morphed child pornography violated the First Amendment. The United States Court of Appeals for the Eighth Circuit disagreed, holding that morphed child pornography "implicate the interests of a real child," and creates a lasting record of an identifiable minor child seemingly engaged in

[25] *Ashcroft*, 535 U.S. at 256.
[26] *Id*.
[27] *Id*. at 242.
[28] *McFadden v. Alabama*, 67 So. 3d 169, 181-182 (Ala. Crim. App. 2010).
[29] Pub. L. No. 108-21.
[30] 18 U.S.C. s. 2256(8)(B).
[31] *See United States v. Ramos*, 685 F. 3d 120, 134 (2d Cir. 2012), *cert. denied*, 133 S.Ct. 567 (2012); *see also Doe v. Boland*, 630 F. 3d 491, 497 (6th Cir. 2011).
[32] *United States v. Bach*, 400 F. 3d 622 (8th Cir. 2005).
[33] *Id*. at 625.
[34] *Id*.

sexually explicit activity.[35] The court noted that there may be instances when the "application of s. 2256(8)(C) violates the First Amendment, this is not such a case. This image involves the type of harm which can constitutionally be prosecuted under [*Ashcroft*] and *Ferber*."[36]

In *United States v. Anderson*, the defendant was charged with distribution of morphed child pornography relating to an image in which the face of a minor female was superimposed over the face of an adult female engaging in sex with an adult male.[37] The defendant moved to dismiss the charge, arguing that the definition of morphed child pornography was unconstitutionally overbroad.[38] The court noted that the image at issue was different from the one in *Bach* in that "no minor was sexually abused."[39] However, the court held that because such images falsely portray identifiable children engaging in sexual activity, such images implicate the government's compelling interest in protecting minors. Using this reasoning, the court held that the definition of morphed child pornography was constitutional.[40]

Florida Child Pornography Laws

Child pornography is defined, as *any* image depicting a minor[41] engaged in sexual conduct.[42, 43] Florida law currently contains a variety of statutes that prohibit acts relating to child pornography. Currently, these statutes are found in two different chapters, ch. 827, F.S., relating to the abuse of children, and ch. 847, F.S., relating to obscenity.

In recent years, individuals have started using AI to create child pornography, e.g., images depicting sexually explicit conduct in which an actual child's head has been superimposed onto an adult's body.[44] Florida's child pornography laws do not include morphed pornography.

In 2010, Florida's Second DCA held that images that depicted the heads and faces of two children, ages 11 and 12, which were cut and pasted onto images of a 19 year old woman lewdly exhibiting her genitals did not constitute child pornography.[45] The court closely examined the

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[35] *Id*. at 632.
[36] *Id*. *See also United States v. Hotaling*, 634 F. 3d 725 (2d Cir. 2008), cert. denied, 132 S.Ct. 843 (2011) (citing *Bach*, the Court held that "child pornography created by digitally altering sexually explicit photographs of adults to display the face of a child is not protected expressive speech under the First Amendment").
[37] 759 F. 3d 891 (8th Cir. 2014).
[38] *Id*.
[39] *Id*. at 895.
[40] *Id*. at 896.
[41] Section 847.001(8), F.S., provides that "minor" means any person under the age of 18 years.
[42] "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 a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct." Section 847.001(16), F.S.
[43] Section 847.001(3), F.S.
[44] *Computer Generated Child Pornography: A Legal Alternative?* Seattle University Law Review, Vol. 22:643, 1998, available at https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1585&context=sulr (last visited February 28, 2022).
[45] *Stelmack v. State*, 58 So. 3d 874 (Fla. 2d DCA 2010).

definition of "sexual conduct," and determined that it requires images to include actual lewd exhibition of the genitals *by a child*.[46]

The court also noted that the images depicted *simulated* lewd exhibition of the genitals by a child. The state argued that s. 827.071(5), F.S., proscribed such images because they were photographs or representations "which ... *in part* ... include ... sexual conduct by a child."[47] The court disagreed and found that the Legislature specifically excluded *simulated* lewd exhibition from the definition of "sexual conduct." Specifically, the court stated, "[i]f the legislature had intended to proscribe the possession of composite images that simulate lewd and lascivious exhibition of the genitals, it could have included a provision doing so. In fact, child pornography has been defined in the federal statutes to specifically include composite images. . . ."[48]

Section 827.071, F.S., specifies the criminal offenses for the production of child pornography and the possession and promotion of child pornography. It is a second degree felony[49] for a person:

- Knowing the character and content thereof, to employ, authorize, or induce a child to engage in a sexual performance.[50]
- Who is a parent, legal guardian or custodian to consent for a child to participate in a sexual performance.[51]
- Knowing the character and content, to produce, direct, or promote[52] any performance which includes sexual conduct by a child.[53]
- To 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.[54]

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.[55]

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[46] *Id*. at 877
[47] *Id*. (emphasis in original).
[48] *Id*. at 876.
[49] A second degree felony is punishable by up to 15 years imprisonment and up to a $10,000 fine. Sections 775.082 and 775.083, F.S.
[50] Section 827.071(1)(c), F.S., provides "performance" means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.
[51] Section 827.071(2), F.S.
[52] Section 827.071(1)(d), F.S, provides "promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer to agree to do the same.
[53] Section 827.071(3), F.S.
[54] Possession of three or more copies of such photographs, etc., is prima facie evidence of intent to promote.
[55] The statute also specifies that the possession, control, or intentional viewing of each such photograph, etc., is a separate offense. If such photograph, etc., includes sexual conduct by more than one child, then each child in each photograph, etc., that is knowingly possessed, controlled, or intentionally viewed is a separate offense.

Section 847.0137, F.S., specifies that any person who knew or reasonably should have known that he or she was transmitting[56, 57] child pornography to another person commits a third degree felony.

Child Sexual Abuse Material

There has been a recent push to replace the term "child pornography" with "child sexual abuse material." The Florida Department of Law Enforcement is one such entity that has requested this change.[58] Proponents of this change argue that the term "child pornography" should be avoided because:

- It fails to describe the true nature of the material and undermines the seriousness of the abuse from the child's perspective;
- Pornography is a term primarily used to describe material depicting consensual sexual acts between adults distributed for the purpose of sexual pleasure. Using the term in this context risks normalizing, trivializing, and legitimizing the sexual abuse and exploitation of children; and
- Child pornography implies consent, and a child cannot legally give consent.[59]

Child-like Sex Dolls

In 2019, Florida enacted laws relating to the possession and distribution of child-like sex dolls. Section 847.011(5)(a), F.S., provides that it is a third degree felony for a first offense, and a second degree felony for a second or subsequent offense for a person to knowingly:

- Sell, lend, give away, distribute, transmit, show, or transmute;
- Offer to sell, lend, give away, distribute, transmit, show, or transmute;
- Have in his or her possession, custody, or control with the intent to sell, lend, give away, distribute, transmit, show, or transmute; or
- Advertise in any manner an obscene, child-like sex doll.[60]

It is a first degree misdemeanor for a first offense, and a third degree felony for a second or subsequent offense for a person to knowingly have in his or her possession, custody, or control an obscene, child-like sex doll.[61]

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[56] Section 847.0137(1)(b), F.S., provides "transmit" means the act of sending and causing to be delivered any image, information, or data from one or more persons or places to one or more other persons or places over or through any medium, including the Internet, by use of any electronic equipment or device.
[57] *Smith v. Florida*, 204 So. 3d 18, 19 (Fla. 2016), held that "the use of a file sharing program, where the originator affirmatively grants the receiver access to child pornography placed by the originator in files accessible through the file sharing program, constitutes the transmission of child pornography under the plain meaning of s. 847.0137, F.S."
[58] Florida Department of Law Enforcement, *2022 Bill Analysis for SB 1798*, January 19, 2022 (on file with Senate Criminal Justice Committee).
[59] INHOPE, *What is Child Sexual Abuse Material?* (2022), available at https://www.inhope.org/EN/articles/child-sexual-abuse-material?locale=en (last visited February 28, 2022).
[60] Section 847.011(5)(a), F.S.
[61] Section 847.011(5)(b), F.S.

Sexual Activities Involving Animals

Approximately 48 states have laws prohibiting sexual conduct with animals. New Mexico and West Virginia do not have state laws prohibiting sexual contact with animals.[62] A study of incidents from 1975 to 2015 found that 31.6 percent of animal sex offenders also sexually offended adults and children.[63] Additionally, 52.9 percent of animal sex offenders had a prior or subsequent criminal record involving human sexual abuse, animal abuse, interpersonal violence, substances or property offenses.[64]

Section 828.126, F.S., provides that it is a first degree misdemeanor for a person to knowingly:

- Engage in any sexual conduct or sexual contact with an animal;
- Cause, aid, or abet another person to engage in any sexual conduct or sexual contact with an animal;
- Permit any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control; or
- Organize, promote, conduct, advertise, aid, abet, participate in as an observer, or perform any service in the furtherance of an act involving any sexual conduct or sexual contact with an animal for a commercial or recreational purpose.[65]

"Sexual conduct" is defined as any touching or fondling by a person, either directly or through clothing, of the sex organs or anus of an animal or any transfer or transmission of semen by the person upon any part of the animal for the purpose of sexual gratification or arousal of the person.[66]

"Sexual contact" is defined as any contact, however slight, between the mouth, sex organ, or anus of a person and the sex organ or anus of an animal, or any penetration, however slight, of any part of the body of the person into the sex organ or anus of an animal, or any penetration of the sex organ or anus of the person into the mouth of the animal, for the purpose of sexual gratification or sexual arousal of the person.[67]

Section 828.126, F.S., does not apply to accepted animal husbandry practices, conformation judging practices, or accepted veterinary medical practices.[68]

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[62] Michigan State University, Animal Legal & Historical Center, *Table of State Animal Sexual Assault Laws*, available at https://www.animallaw.info/topic/table-state-animal-sexual-assault-laws (last visited February 28, 2022).
[63] The Journal of the American Academy of Psychiatry and the Law, *Arrest and Prosecution of Animal Sex Abuse (Bestiality) Offenders in the United States, 1975 – 2015*, May 2019, available at http://jaapl.org/content/early/2019/05/16/JAAPL.003836-19 (last visited February 28, 2022).
[64] *Id.*
[65] Section 828.126(2), F.S.
[66] Section 828.126(1)(a), F.S.
[67] Section 828.126(1)(b), F.S.
[68] Section 828.126(4), F.S.

Criminal Punishment Code and Offense Severity Ranking

The Criminal Punishment Code[69] is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (levels 1-10). Points are assigned and accrue based upon the severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates.

Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S. Currently, unless otherwise specifically ranked, a felony of the third degree is ranked as a level 1 offense, and a second degree felony is ranked as a level 4 offense.[70]

III. Effect of Proposed Changes:

Unlawful Promotion of Sexually Explicit Material

This bill creates two new sections of criminal law addressing the promotion, theft, and possession of certain sexually explicit material. The bill defines the following terms relating to these new crimes:

- "Altered sexual depiction" means any visual depiction that, as a result of any type of digital, electronic, mechanical, or other modification, alteration, or adaptation, depicts a realistic version of an identifiable person: with the nude body parts of another person as the nude body parts of the identifiable person; with computer-generated nude body parts as the nude body parts of the identifiable person; or engaging in sexual conduct in which the identifiable person did not engage.
- "Identifiable person" means a person who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature.
- "Nude body parts" means human male or female genitals, pubic area, or buttocks with less than fully opaque covering; or the female breast with less than fully opaque covering any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. The term does not under any circumstances include a mother breastfeeding her baby.
- "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, transmute, publish, distribute, circulate, disseminate, present, exhibit, send, post, share, or advertise or to offer or agree to do the same.
- "Sexually explicit image" means any image depicting nudity[71] or depicting a person engaging in sexual conduct.[72]

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[69] 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.

[70] Section 921.0023(1) and (2), F.S.

[71] "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother's breastfeeding of her baby does not under any circumstance constitute "nudity," irrespective of whether or not the nipple is covered during or incidental to feeding. Section 847.001(9), F.S.

[72] "Sexual conduct" means actual or simulated 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,

- "Visual depiction" includes, but is not limited to, a photograph, picture, image, motion picture, film, video, or representation, regardless of whether such photograph, picture, image, motion picture, film, video, or representation was made, modified, altered, adapted, or produced by digital, electronic, mechanical, or other means.

The bill addresses deep fake images by providing a person commits a third degree felony when he or she willfully and maliciously promotes any altered sexual depiction of an identifiable person, without the consent of the identifiable person, and who knows or reasonably should have known that such visual depiction was an altered sexual depiction.[73]

The presence of a disclaimer within an altered sexual depiction which notifies a viewer that the person or persons depicted did not consent to or participate in the creation or promotion of the material, or that the person or persons depicted did not actually perform the actions portrayed, is not a defense and does not relieve a person of criminal liability.[74]

The bill criminalizes theft or unauthorized promotion of a sexually explicit image. A person commits a third degree felony when he or she:

- Commits a theft, in violation of s. 812.014, F.S.,[75] of a sexually explicit image with the intent to promote such image; or
- Willfully possesses with the intent to promote a sexually explicit image that he or she knows or should have known was obtained in violation of the offense described above.[76]

The bill provides a higher penalty, a second degree felony, when a person willfully promotes for the purpose of pecuniary or any type of financial gain a sexually explicit image of an identifiable person without that person's consent. [77] Exceptions are provided for sexually explicit images involving voluntary exposure in a public or commercial setting, and sexually explicit images possessed or promoted by a bona fide news media organization for a legitimate and newsworthy purpose.

Additionally, every act, thing or transaction prohibited in these offenses constitutes a separate offense.[78] The bill also specifies that a violation is committed within this state if any conduct that is an element of the offense, or any harm to the depicted individual resulting from the offense, occurs in this state.[79]

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buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute sexual conduct. Section 847.001(16), F.S.

[73] This new offense is created in the bill under s. 836.13(2), F.S.

[74] This provision is established in the newly created s. 836.13(4), F.S.

[75] Section 812.014(1), F.S., provides that a person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently: deprive the other person of a right to the property or a benefit from the property; or appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

[76] These new offenses are created under s. 836.14(2) and (3), F.S., respectively.

[77] This new offense is created under s. 836.14(4), F.S.

[78] This provision applies to both new offenses and is established in the newly created ss. 836.13 and 836.14, F.S.

[79] This provision applies to both new offenses and is established in the newly created ss. 836.13 and 836.14, F.S.

Prosecution of a person for any of the above described offenses does not preclude prosecution of that person in this state for a violation of any other law of this state, including a law providing for greater penalties than prescribed in this section or any other crime related to child sexual abuse material or the sexual performance or sexual exploitation of children.

The bill creates a civil cause of action so that an aggrieved person may receive injunctive relief; monetary damages of $10,000 or actual damages, whichever is greater; and reasonable attorney fees and costs.[80]

The criminal and civil penalties created for these crimes do not apply to:
- A provider of an interactive computer service, of an information service, or of a communications service which provides the transmission, storage, or caching of electronic communications or messages of others; another related telecommunications or commercial mobile radio service; or content provided by another person;
- A law enforcement officer, or any local, state, federal, or military law enforcement agency that disseminates a sexually explicit image in connection with the performances of his or her duties;
- A person reporting unlawful activity; or
- A person participating in a hearing, trial, or other legal proceeding.[81]

Additionally, the felony offenses created in this bill are ranked in the offense severity ranking chart of the Criminal Punishment Code. The third degree felony offense of promoting an altered sexual depiction created in s. 836.13, F.S., is ranked as a level 3 offense. The third degree felony offenses relating to theft or unauthorized promotion of a sexually explicit image in s. 836.14, F.S., are ranked as level 4 offenses. The second degree felony offense of promoting a sexually explicit image created in s. 836.14, F.S., is ranked as a level 5 offense.

Sexual Cyberharassment

The bill amends s. 784.049, F.S., relating to sexual cyberharassment, to increase the minimum monetary damages from $5,000 to $10,000 that a victim may receive as a result of a civil action.

Child Sexual Abuse Material and Obscenity

The bill amends ss. 39.0138, 92.56, 92.561, 435.07, 775.0847, 827.071, 847.001, 847.0137, 847.0139, 847.002, 960.03, and 960.197, F.S., to replace the term "child pornography," with "child sexual abuse material." Additionally, the bill further amends ss. 775.0847, 827.071, and 847.001, F.S., to expand this term to include any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor engaged in sexual conduct.

The bill provides that "identifiable minor" means a person:
- Who was a minor at the time the image was created, altered, adapted, or modified, or whose image as a minor was used in the creating, altering, adapting, or modifying of the image; and

[80] This provision applies to both new offenses and is established in the newly created ss. 836.13 and 836.14, F.S.
[81] This provision is established in ss. 836.13 and 836.14, F.S.

- Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature.

This term may not be construed to require proof of the actual identity of the identifiable minor.

The bill further amends s. 827.071, F.S., to replace the phrase "any sexual conduct by a child," with the term "child sexual abuse material." The term "child sexual abuse material," includes images depicting any sexual conduct by a child.

The bill amends s. 775.0847, F.S., to replace the term "movie" with "motion picture, film, video, or computer-generated motion picture, film, or video," for purposes of enhancing specified offenses relating to child sexual abuse material or obscenity.

Additionally, the bill expands or adds multiple terms relating to child sexual abuse material or obscenity throughout the Florida Statutes. Specifically the bill:

- Amends the terms "minor" and "child" in ss. 775.0847 and 847.001, F.S., to provide that "minor" or "child" means any person, whose identity is known or unknown, younger than 18 years of age. The bill adds that definition of "minor" or "child" to s. 827.071, F.S.
- Amends s. 827.071, F.S., to expand the definition of "promote" and includes the new expanded definition of "promote," to s. 847.001, F.S. The bill provides "promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, *transmit*, transmute, publish, distribute, circulate, disseminate, present, exhibit, *send*, *post*, *share*, or advertise or to offer or agree to do the same.
- Expands the definition of "sexual conduct," in ss. 775.0847, 827.071, and 847.001, F.S., to include *simulated* lewd exhibition of the genitals.

Child-like Sex Dolls

The bill amends s. 847.011(5), F.S., relating to the possession of obscene, child-like sex dolls, to provide that a law enforcement officer may arrest without a warrant any person who he or she has probable cause to believe possesses a child-like sex doll.

Sexual Activities Involving Animals

The bill removes the term "sexual conduct" and provides one definition for "sexual contact with an animal" to mean any act committed between an animal for the purpose of sexual gratification, abuse, or financial gain which involves:

- Contact between the sex organ or anus of one and the mouth, sex organ, or anus of the other;
- The fondling of the sex organ or anus of an animal; or
- The insertion, however slight, of any part of the body of a person or any object into the vaginal or anal opening of an animal, or the insertion of any part of the body of an animal into the vaginal or anal opening of a person.

The bill revises the prohibited conduct to include that a person may not knowingly:

- Advertise, offer, solicit, or accept an offer of an animal for the purpose of sexual contact with such animal; or

- Film, distribute, or possess any pornographic image or video of a person and an animal engaged in any prohibited conducted related to sexual activities involving animals.

The bill increases the penalty for sexual contact with an animal from a first degree misdemeanor to a third degree felony, and ranks the felony as a level 6 in the offense severity ranking chart of the Criminal Punishment Code.

Additionally, the bill provides that the court must issue an order prohibiting a person convicted of sexual activity involving an animal, from:
- Harboring, owning, possessing, or exercising control over any animal;
- Residing in any household in which animals are present; and
- Engaging in an occupation, whether paid or unpaid, or volunteering at any establishment at which animals are present.

Such order may be effective for up to 5 years after the date of conviction, regardless of whether adjudication is withheld.

The bill provides an exception to criminal liability for accepted husbandry practices, including, but not limited to, bona fide agricultural purposes, assistance with the birthing process or artificial insemination of an animal for reproductive purposes. Additionally, the bill specifies that *accepted* conformation judging practices is an exception to criminal liability.

Additionally, the bill amends a number of sections conforming cross-references to changes made by the act.

The 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:

This bill likely has a positive indeterminate fiscal impact (i.e., an unquantifiable increase in prison beds and jail beds) on the Department of Corrections and local jails due to the increased number of prison and jail beds needed for persons convicted of the crimes created, the expansion of existing crimes, or increased penalties, provided in the bill.

The bill creates a third degree felony for promoting an altered sexual depiction. The bill also creates s. 836.14, F.S., to create two third degree felony offenses and one second degree felony offense, related to theft or unauthorized promotion of a sexually explicit image.

The bill creates a new crime and expands a current crime relating to sexual activity involving animals. Additionally, the bill increases the penalty from a first degree misdemeanor to a third degree felony for crimes relating to sexual activities involving animals. Due to this expansion and increased penalty, more people may receive a prison sentence for behavior that is not prohibited under current law, or is prohibited but the penalty is currently a first degree misdemeanor.

Additionally, the bill expands the definition of child sexual abuse material. Due to this expansion, more people may be arrested and convicted under existing crimes for behavior that is not prohibited under current law, but is prohibited under the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 775.0847, 784.049, 827.071, 828.126, 847.001, 847.011, 847.0137, 921.0022, 960.03, 288.1254, and 847.0141.

This bill creates the following sections of the Florida Statutes: 836.13 and 836.14.

This bill makes conforming technical changes to the following sections of the Florida Statutes: 39.0138, 92.56, 92.561, 288.1254, 435.07, 456.074, 847.002, 847.01357, 847.0139, 847.0141, 948.06, and 960.197, F.S.

IX. Additional Information:

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

CS/CS by Appropriations on February 28, 2022:
The committee substitute:

- Removes the term *sexual conduct* and provides one definition for *sexual contact with an animal* that encompasses such conduct, and revises the prohibited conduct to specify that a person may not: advertise, offer, solicit, or accept an offer of an animal for the purpose of sexual contact with the animal; or knowingly film, distribute, or possess any pornographic image or video of a person and an animal engaged in any activities prohibited.
- Increases the penalty for *sexual contact with an animal* from a first degree misdemeanor to a third degree felony.
- Provides that the court must issue an order prohibiting a person convicted of sexual activity involving an animal, from: possessing or exercising control over an animal; living with an animal; and, working or volunteering at any place where an animal is present.
- Specifies that these crimes do not apply to accepted animal husbandry practices, including, but not limited to, bona fide agricultural purposes, assistance with the birthing process or artificial insemination of an animal for reproductive purposes.
- Provides an exception from criminal or civil liability for a sexually explicit image possessed or promoted by a bona fide news media organization for a legitimate and newsworthy purpose.
- Makes technical and clarifying changes recommended by staff.

CS by Criminal Justice on January 25, 2022:
The committee substitute:

- Creates the third degree felony of *promotion of an altered sexual depiction*, and two third degree felonies and one second degree felony for *unlawfully obtaining, possessing, or promoting a sexually explicit image* which replaces, and targets the same conduct as the crime created in the original bill.
- Increases the amount of monetary damages a victim of sexual cyberharassment may receive in a civil action, from $5,000 to $10,000.
- Renames the crime of "child pornography" to "child sexual abuse material" and expands the definition to include any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor engaged in sexual conduct.

- Provides a definition of "identifiable minor," that is consistent with the definition under federal law.
- Removes the previous definition of "digitization," that was provided in the bill.
- Replaces the term "movie" with "motion picture, film, video, or computer-generated motion picture, film, or video," for purposes of enhancing specified offenses relating to child pornography or obscenity.
- Includes an exception to the warrant requirement if the officer has probable cause to believe a person possesses an obscene, child-like sex doll.

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	.	
03/01/2022	.	
	.	
	.	
	.	

The Committee on Appropriations (Pizzo) recommended the following:

Senate Amendment (with title amendment)

Delete lines 67 - 713

and insert:

altered, adapted, or modified, or whose image as a minor was used in the creating, altering, adapting, or modifying of the image; and

2. Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature.


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The term may not be construed to require proof of the actual identity of the identifiable minor.

(d) ~~(c)~~ "Sadomasochistic abuse" means 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.

(e) ~~(d)~~ "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.

(f) ~~(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 vagina of the other.

(g) ~~(f)~~ "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

(2) A violation of s. 827.071, s. 847.0135, s. 847.0137, or

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s. 847.0138 shall be reclassified to the next higher degree as provided in subsection (3) if:

(a) The offender possesses 10 or more images of any form of child sexual abuse material ~~child pornography~~ regardless of content; and

(b) The content of at least one image contains one or more of the following:

1. A child who is younger than the age of 5.

2. Sadomasochistic abuse involving a child.

3. Sexual battery involving a child.

4. Sexual bestiality involving a child.

5. Any motion picture, film, video, or computer-generated motion picture, film, or video ~~movie~~ involving a child, regardless of length and regardless of whether the motion picture, film, video, or computer-generated motion picture, film, or video ~~movie~~ contains sound.

(3)(a) In the case of a felony of the third degree, the offense is reclassified to a felony of the second degree.

(b) In the case of a felony of the second degree, the offense is reclassified to a felony of the first degree.

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 2. Paragraph (b) of subsection (5) of section 784.049, Florida Statutes, is amended to read:

784.049 Sexual cyberharassment.—

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(5) An aggrieved person may initiate a civil action against a person who violates this section to obtain all appropriate relief in order to prevent or remedy a violation of this section, including the following:

(b) Monetary damages to include $10,000 ~~$5,000~~ or actual damages incurred as a result of a violation of this section, whichever is greater.

Section 3. Section 827.071, Florida Statutes, is amended to read:

827.071 Sexual performance by a child; child sexual abuse material; penalties.—

(1) As used in this section, the following definitions shall apply:

(a) "Child" or "minor" means any person, whose identity is known or unknown, younger than 18 years of age.

(b) "Child sexual abuse material" means:

1. Any image depicting a minor engaged in sexual conduct; or

2. Any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor engaged in sexual conduct.

(c) ~~(a)~~ "Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

(d) "Identifiable minor" means a person:

1. Who was a minor at the time the image was created, altered, adapted, or modified, or whose image as a minor was used in the creating, altering, adapting, or modifying of the

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image; and

2. Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature.

The term may not be construed to require proof of the actual identity of the identifiable minor.

(e) ~~(b)~~ "Intentionally view" means to deliberately, purposefully, and voluntarily view. Proof of intentional viewing requires establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation over any period of time.

(f) ~~(c)~~ "Performance" means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

(g) ~~(d)~~ "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, transmute, publish, distribute, circulate, disseminate, present, exhibit, send, post, share, or advertise or to offer or agree to do the same.

(h) ~~(e)~~ "Sadomasochistic abuse" means 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 from inflicting harm on another or receiving such harm oneself.

(i) ~~(f)~~ "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

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bona fide medical purpose.

(j) ~~(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 vagina of the other.

(k) ~~(h)~~ "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

(l) ~~(i)~~ "Sexual performance" means any performance or part thereof which includes sexual conduct by a child ~~of less than 18 years of age~~.

(m) ~~(j)~~ "Simulated" means the explicit depiction of conduct set forth in paragraph (k) ~~(h)~~ which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

(2) A person is guilty of the use of a child in a sexual performance if, knowing the character and content thereof, he or she employs, authorizes, or induces a child ~~less than 18 years of age~~ to engage in a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance. A person who ~~Whoever~~ violates this subsection commits ~~is guilty of~~ a


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felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child ~~less than 18 years of age~~. A person who ~~Whoever~~ violates this subsection commits ~~is guilty of~~ a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) It is unlawful for any person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes child sexual abuse material ~~any sexual conduct by a child~~. The possession of three or more copies of such photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote. A person who ~~Whoever~~ violates this subsection commits ~~is guilty of~~ a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5)(a) It is unlawful for any 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 child sexual abuse material ~~any sexual conduct by a child~~. The possession, control, or intentional viewing of each such photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or presentation is a separate offense. If such photograph, motion picture, exhibition, show, representation, image, data, computer

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depiction, or other presentation includes child sexual abuse material depicting ~~sexual conduct by~~ more than one child, then each such child in each such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation that is knowingly possessed, controlled, or intentionally viewed is a separate offense. A person who violates this paragraph ~~subsection~~ commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Paragraph (a) ~~This subsection~~ does not apply to any material possessed, controlled, or intentionally viewed as part of a law enforcement investigation.

(6) Prosecution of a ~~any~~ person for an offense under this section does ~~shall~~ not preclude ~~prohibit~~ prosecution of that person in this state for a violation of any other law of this state, including a law providing for greater penalties than prescribed in this section or any other crime punishing the sexual performance or the sexual exploitation of children.

Section 4. Section 836.13, Florida Statutes, is created to read:

836.13 Promotion of an altered sexual depiction; prohibited acts; penalties; applicability.—

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

(a) "Altered sexual depiction" means any visual depiction that, as a result of any type of digital, electronic, mechanical, or other modification, alteration, or adaptation, depicts a realistic version of an identifiable person:

1. With the nude body parts of another person as the nude body parts of the identifiable person;


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2. With computer-generated nude body parts as the nude body parts of the identifiable person; or

3. Engaging in sexual conduct as defined in s. 847.001 in which the identifiable person did not engage.

(b) "Identifiable person" means a person who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature.

(c) "Nude body parts" means the human male or female genitals, pubic area, or buttocks with less than fully opaque covering; or the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. The term does not under any circumstances include a mother breastfeeding her baby.

(d) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, transmute, publish, distribute, circulate, disseminate, present, exhibit, send, post, share, or advertise or to offer or agree to do the same.

(e) "Visual depiction" includes, but is not limited to, a photograph, picture, image, motion picture, film, video, or representation, regardless of whether such photograph, picture, image, motion picture, film, video, or representation was made, modified, altered, adapted, or produced by digital, electronic, mechanical, or other means.

(2) A person who willfully and maliciously promotes any altered sexual depiction of an identifiable person, without the consent of the identifiable person, and who knows or reasonably

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should have known that such visual depiction was an altered sexual depiction, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Every act, thing, or transaction prohibited by this section constitutes a separate offense and is punishable as such.

(4) The presence of a disclaimer within an altered sexual depiction which notifies a viewer that the person or persons depicted did not consent to or participate in the creation or promotion of the material, or that the person or persons depicted did not actually perform the actions portrayed, is not a defense and does not relieve a person of criminal liability under this section.

(5) An aggrieved person may initiate a civil action against a person who violates subsection (2) to obtain appropriate relief in order to prevent or remedy a violation of subsection (2), including all of the following:

(a) Injunctive relief.

(b) Monetary damages to include $10,000 or actual damages incurred as a result of a violation of subsection (2), whichever is greater.

(c) Reasonable attorney fees and costs.

(6) The criminal and civil penalties of this section do not apply to:

(a) A provider of an interactive computer service as defined in 47 U.S.C. s. 230(f), of an information service as defined in 47 U.S.C. s. 153, or of a communications service as defined in s. 202.11 which provides the transmission, storage, or caching of electronic communications or messages of others;

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another related telecommunications or commercial mobile radio service; or content provided by another person;

(b) A law enforcement officer, as defined in s. 943.10, or any local, state, federal, or military law enforcement agency that promotes an altered sexual depiction in connection with the performance of his or her duties as a law enforcement officer or the duties of the law enforcement agency;

(c) A person reporting unlawful activity; or

(d) A person participating in a hearing, trial, or other legal proceeding.

(7) A violation of this section is committed within this state if any conduct that is an element of the offense, or any harm to the depicted person resulting from the offense, occurs within this state.

(8) Prosecution of a person for an offense under this section does not preclude prosecution of that person in this state for a violation of any other law of this state, including a law providing for greater penalties than prescribed in this section or any other crime related to child sexual abuse material or the sexual performance or the sexual exploitation of children.

Section 5. Section 836.14, Florida Statutes, is created to read:

836.14 Theft or unauthorized promotion of a sexually explicit image.—

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

(a) "Identifiable person" has the same meaning as in s. 836.13.

(b) "Promote" has the same meaning as in s. 836.13.

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(c) "Sexually explicit image" means any image depicting nudity as defined in s. 847.001 or a person engaging in sexual conduct as defined in s. 847.001.

(2) A person who commits a theft in violation of s. 812.014 of a sexually explicit image with the intent to promote such image commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who willfully possesses with the intent to promote a sexually explicit image that he or she knows or should have known was obtained in violation of subsection (2) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who willfully promotes for the purpose of pecuniary or any other financial gain a sexually explicit image of an identifiable person without that person's consent commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Every act, thing, or transaction prohibited by this section constitutes a separate offense and is punishable as such.

(6) An aggrieved person may initiate a civil action against a person who violates this section to obtain all appropriate relief in order to prevent or remedy a violation of this section, including the following:

(a) Injunctive relief.

(b) Monetary damages to include $10,000 or actual damages incurred as a result of a violation of this section, whichever is greater.

(c) Reasonable attorney fees and costs.

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(7) The criminal and civil penalties of this section do not apply to:

(a) A provider of an interactive computer service as defined in 47 U.S.C. s. 230(f), of an information service as defined in 47 U.S.C. s. 153, or of a communications service as defined in s. 202.11 which provides the transmission, storage, or caching of electronic communications or messages of others; another related telecommunications or commercial mobile radio service; or content provided by another person;

(b) A law enforcement officer, as defined in s. 943.10, or any local, state, federal, or military law enforcement agency that disseminates a sexually explicit image in connection with the performance of his or her duties as a law enforcement officer or the duties of the law enforcement agency;

(c) A person reporting unlawful activity;

(d) A person participating in a hearing, trial, or other legal proceeding;

(e) Sexually explicit images involving voluntary exposure in a public or commercial setting; or

(f) Sexually explicit images possessed or promoted by a bona fide news media organization for a legitimate and newsworthy purpose.

(8) A violation of this section is committed within this state if any conduct that is an element of the offense, or any harm to the depicted individual resulting from the offense, occurs within this state.

(9) Prosecution of a person for an offense under this section does not preclude prosecution of that person in this state for a violation of any other law of this state, including

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a law providing for greater penalties than prescribed in this section or any other crime related to child sexual abuse material or the sexual performance or the sexual exploitation of children.

Section 6. Present subsections (7) through (11) and (12) through (20) of section 847.001, Florida Statutes, are redesignated as subsections (8) through (12) and (14) through (22), respectively, new subsections (7) and (13) are added to that section, and subsection (3) and present subsections (8), (16), and (19) of that section are amended, to read:

847.001 Definitions.—As used in this chapter, the term:

(3) "Child sexual abuse material" ~~"Child pornography"~~ means:

(a) Any image depicting a minor engaged in sexual conduct; or

(b) Any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor engaged in sexual conduct.

(7) "Identifiable minor" means a person:

(a) Who was a minor at the time the image was created, altered, adapted, or modified, or whose image as a minor was used in the creating, altering, adapting, or modifying of the image; and

(b) Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature.

The term may not be construed to require proof of the actual identity of the identifiable minor.

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(9) ~~(8)~~ "Minor" or "child" means any person, whose identity is known or unknown, younger than ~~under the age of~~ 18 years of age.

(13) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, transmute, publish, distribute, circulate, disseminate, present, exhibit, send, post, share, or advertise or to offer or agree to do the same.

(18) ~~(16)~~ "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

(21) ~~(19)~~ "Simulated" means the explicit depiction of conduct described in subsection (18) ~~(16)~~ which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

Section 7. Subsection (5) of section 847.011, Florida Statutes, is amended to read:

847.011 Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty.—

(5)(a)1. A person may not knowingly sell, lend, give away, distribute, transmit, show, or transmute; offer to sell, lend,

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give away, distribute, transmit, show, or transmute; have in his or her possession, custody, or control with the intent to sell, lend, give away, distribute, transmit, show, or transmute; or advertise in any manner an obscene, child-like sex doll.

2.a. Except as provided in sub-subparagraph b., a person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. A person who is convicted of violating this paragraph a second or subsequent time commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b)1. Except as provided in subparagraph 2., a person who knowingly has in his or her possession, custody, or control an obscene, child-like sex doll commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. A person who is convicted of violating this paragraph a second or subsequent time commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(c)1. A law enforcement officer may arrest without a warrant any person who he or she has probable cause to believe has violated paragraph (b).

2. Upon proper affidavits being made, a search warrant may be issued to further investigate a violation of paragraph (b), including to search a private dwelling.

Section 8. Subsections (1) through (4) of section 847.0137, Florida Statutes, are amended to read:

847.0137 Transmission of pornography by electronic device or equipment prohibited; penalties.—

(1) As used in this section, the term ~~For purposes of this~~


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~~section:~~

~~(a) "Minor" means any person less than 18 years of age.~~

~~(b)~~ "transmit" means the act of sending and causing to be delivered, including the act of providing access for receiving and causing to be delivered, any image, information, or data ~~from one or more persons or places to one or more other persons or places~~ over or through any medium, including the Internet or an interconnected network, by use of any electronic equipment or other device.

(2) Notwithstanding ss. 847.012 and 847.0133, any person in this state who knew or reasonably should have known that he or she was transmitting child sexual abuse material ~~child pornography~~, as defined in s. 847.001, to another person in this state or in another jurisdiction commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Notwithstanding ss. 847.012 and 847.0133, any person in any jurisdiction other than this state who knew or reasonably should have known that he or she was transmitting child sexual abuse material ~~child pornography~~, as defined in s. 847.001, to any person in this state commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) This section shall not be construed to preclude ~~prohibit~~ prosecution of a person in this state or another jurisdiction for a violation of any law of this state, including a law providing for greater penalties than prescribed in this section, for the transmission of child sexual abuse material ~~child pornography~~, as defined in s. 847.001, to any person in this state.


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The provisions of this section do not apply to subscription-based transmissions such as list servers.

Section 9. Section 828.126, Florida Statutes, is amended to read:

828.126 Sexual activities involving animals.—

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

~~(a) "Sexual conduct" means any touching or fondling by a person, either directly or through clothing, of the sex organs or anus of an animal or any transfer or transmission of semen by the person upon any part of the animal for the purpose of sexual gratification or arousal of the person.~~

~~(b)~~ "Sexual contact with an animal" means any act committed between a person and an animal for the purpose of sexual gratification, abuse, or financial gain which involves:

(a) Contact between the sex organ or anus of one and the mouth, sex organ, or anus of the other;

(b) The fondling of the sex organ or anus of an animal; or

(c) The insertion, however slight, of any part of the body of a person or any object into the vaginal or anal opening of an animal, or the insertion of any part of the body of an animal into the vaginal or anal opening of a person ~~contact, however slight, between the mouth, sex organ, or anus of a person and the sex organ or anus of an animal, or any penetration, however slight, of any part of the body of the person into the sex organ or anus of an animal, or any penetration of the sex organ or anus of the person into the mouth of the animal, for the purpose of sexual gratification or sexual arousal of the person~~.

(2) A person may not:


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(a) Knowingly engage in any ~~sexual conduct or~~ sexual contact with an animal;

(b) Knowingly cause, aid, or abet another person to engage in any ~~sexual conduct or~~ sexual contact with an animal;

(c) Knowingly permit any ~~sexual conduct or~~ sexual contact with an animal to be conducted on any premises under his or her charge or control; ~~or~~

(d) Knowingly organize, promote, conduct, ~~advertise,~~ aid, abet, participate in as an observer, or advertise, offer, solicit, or accept an offer of an animal for the purpose of sexual contact with such animal, or perform any service in the furtherance of an act involving any ~~sexual conduct or~~ sexual contact with an animal; or

(e) Knowingly film, distribute, or possess any pornographic image or video of a person and an animal engaged in any of the activities prohibited by this section ~~for a commercial or recreational purpose~~.

(3) A person who violates this section commits a felony of the third ~~misdemeanor of the first~~ degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

(4) In addition to other penalties prescribed by law, the court shall issue an order prohibiting a person convicted under this section from harboring, owning, possessing, or exercising control over any animal; from residing in any household in which animals are present; and from engaging in an occupation, whether paid or unpaid, or participating in a volunteer position at any establishment at which animals are present. The order may be effective for up to 5 years after the date of the conviction, regardless of whether adjudication is withheld.

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(5) ~~(4)~~ This section does not apply to accepted animal husbandry practices, including, but not limited to, bona fide agricultural purposes, assistance with the birthing process or artificial insemination of an animal for reproductive purposes, accepted conformation judging practices, or accepted veterinary medical practices.

Section 10. Paragraphs (c) through (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

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		with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, 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.



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328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
379.2431 (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

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		Turtle Protection Act.
379.2431 (1)(e)7.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.

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624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
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.
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.

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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



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		instrument with intent to defraud.
831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
836.13(2)	3rd	Person who promotes an altered sexual depiction of an identifiable person without consent.
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
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

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			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).
595			
	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.
596			
	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.
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	893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.



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893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a


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			controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
893.13(8)(a)2.		3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
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)(a)		3rd	Alter, destroy, or conceal

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		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.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.

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499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
517.07(1)	3rd	Failure to register securities.
517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
784.075	3rd	Battery on detention or



		commitment facility staff.
784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
784.081(3)	3rd	Battery on specified official or employee.
784.082(3)	3rd	Battery by detained person on visitor or other detainee.
784.083(3)	3rd	Battery on code inspector.
784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
787.03(1)	3rd	Interference with

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		custody; wrongly takes minor from appointed guardian.
787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
787.07	3rd	Human smuggling.
790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.

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790.115(2)(c)	3rd	Possessing firearm on school property.
800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
806.135	2nd	Destroying or demolishing a memorial or historic property.
810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
810.06	3rd	Burglary; possession of tools.
810.08(2)(c)	3rd	Trespass on property, armed with firearm or



		dangerous weapon.
812.014(2)(c)3.	3rd	Grand theft, 3rd degree $10,000 or more but less than $20,000.
812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree; specified items.
812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen $300 or more.
817.505(4)(a)	3rd	Patient brokering.
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
817.568(2)(a)	3rd	Fraudulent use of personal identification information.
817.625(2)(a)	3rd	Fraudulent use of scanning device, skimming device, or

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		reencoder.
817.625(2)(c)	3rd	Possess, sell, or deliver skimming device.
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
<u>836.14(2)</u>	<u>3rd</u>	<u>Person who commits theft of a sexually explicit image with intent to promote it.</u>
<u>836.14(3)</u>	<u>3rd</u>	<u>Person who possesses a sexually explicit image with certain knowledge and intent to promote it.</u>
837.02(1)	3rd	Perjury in official proceedings.
837.021(1)	3rd	Make contradictory statements in official proceedings.

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838.022	3rd	Official misconduct.
839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
843.021	3rd	Possession of a concealed handcuff key by a person in custody.
843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
847.0135(5)(c)	3rd	Lewd or lascivious

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		exhibition using computer; offender less than 18 years.
870.01(3)	2nd	Aggravated rioting.
870.01(5)	2nd	Aggravated inciting a riot.
874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)5. drugs).
914.14(2)	3rd	Witnesses accepting bribes.
914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily

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		injury.
916.1085 (2)(c)1.	3rd	Introduction of specified contraband into certain DCF facilities.
918.12	3rd	Tampering with jurors.
934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
944.47(1)(a)6.	3rd	Introduction of contraband (cellular telephone or other portable communication device) into correctional institution.
951.22(1)(h), (j) & (k)	3rd	Intoxicating drug, instrumentality or other device to aid escape, or cellular telephone or other portable communication device introduced into county



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detention facility.

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal



			injury; leaving scene.
379.365(2)(c)1.		3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.

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379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
440.381(2)	3rd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.



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624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected $20,000 or more but less than $100,000.
626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
790.01(2)	3rd	Carrying a concealed firearm.
790.162	2nd	Threat to throw or discharge destructive device.
790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.

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790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd	Theft from person 65 years of age or older; $10,000 or more but less than $50,000.
812.015 (8)(a) & (c)-(e)	3rd	Retail theft; property stolen is valued at $750 or more and one or more

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		specified acts.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.
812.081(3)	2nd	Trafficking in trade secrets.
812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.
817.234(11)(b)	2nd	Insurance fraud; property value $20,000 or more but less than $100,000.
817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the



			solvency of an insuring entity.
710			
	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, $5,000 or more or use of personal identification information of 10 or more persons.
711			
	817.611(2)(a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
712			
	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.
713			
	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly

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			person or disabled adult.
714			
	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes <u>child sexual abuse material</u> ~~sexual conduct by a child~~.
715			
	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes <u>child sexual abuse material</u> ~~sexual conduct by a child~~.
716			
	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
717			
	<u>836.14(4)</u>	<u>2nd</u>	<u>Person who promotes for financial gain a sexually explicit image</u>

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		of an identifiable person without consent.
839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
843.01	3rd	Resist officer with violence to person; resist arrest with violence.
847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.

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874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. drugs).
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state,



			county, or municipal park or publicly owned recreational facility or community center.
727			
	893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. drugs) within 1,000 feet of university.
728			
	893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
729			
	893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or

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			other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)5. drugs) within 1,000 feet of public housing facility.
893.13(4)(b)		2nd	Use or hire of minor; deliver to minor other controlled substance.
893.1351(1)		3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.



400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic battery by strangulation.



784.048(3)	3rd	Aggravated stalking; credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083(2)	2nd	Aggravated assault on code inspector.
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.



790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with specified minor.
800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older



			but less than 16 years of age; offender less than 18 years.
762			
	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
763			
	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
764			
	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
765			
	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
766			
	812.014(2)(b)1.	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.
767			
	812.014(6)	2nd	Theft; property stolen $3,000 or more; coordination of others.
768			
	812.015(9)(a)	2nd	Retail theft; property stolen $750 or more; second or subsequent conviction.



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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).
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.

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825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than $10,000.
827.03(2)(c)	3rd	Abuse of a child.
827.03(2)(d)	3rd	Neglect of a child.
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
828.126(3)	3rd	Sexual activities involving animals.
836.05	2nd	Threats; extortion.
836.10	2nd	Written or electronic threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.
843.12	3rd	Aids or assists person to escape.
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene



		materials depicting minors.
847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.

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951.22(1)(i)	3rd	Firearm or weapon introduced into county detention facility.

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

And the title is amended as follows:

Delete lines 2 - 35

and insert:

An act relating to sexually related offenses; amending s. 775.0847, F.S.; redefining terms; replacing the term "child pornography" with the term "child sexual abuse material"; defining the term "identifiable minor"; revising the list of circumstances under which specified offenses may be reclassified; amending s. 784.049, F.S.; increasing the monetary damages that an aggrieved person may receive as a result of violations relating to sexual cyberharassment; amending s. 827.071, F.S.; defining and redefining terms; conforming provisions to changes made by the act; creating s. 836.13, F.S.; defining terms; prohibiting the willful and malicious promotion of certain sexual depictions without consent; providing criminal penalties; providing a civil cause of action; providing applicability; providing construction; creating s. 836.14, F.S.; defining terms; prohibiting a person from committing theft of sexually explicit images with the intent to promote such images;

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prohibiting the possession of sexually explicit images with certain knowledge and with intent to promote without consent; prohibiting the promotion of sexually explicit images for financial gain, without consent; providing criminal penalties; providing a civil cause of action; providing applicability; providing construction; amending s. 847.001, F.S.; redefining terms; replacing the term "child pornography" with the term "child sexual abuse material"; defining the terms "identifiable minor" and "promote"; amending s. 847.011, F.S.; authorizing law enforcement officers to arrest certain persons without a warrant; authorizing a search warrant to be issued for further investigation upon proper affidavits being made; amending s. 847.0137, F.S.; deleting the definition of the term "minor"; redefining the term "transmit"; conforming provisions to changes made by the act; amending s. 828.126, F.S.; revising definitions; revising the prohibition on sexual activities with animals; increasing the criminal penalties for such sexual activities; requiring courts to issue orders prohibiting persons convicted of such sexual activities from engaging in specified activities, from residing in certain households, or from engaging in occupations or positions in which animals are present; revising applicability;

By the Committee on Criminal Justice; and Senator Book

591-02274A-22 20221798c1

A bill to be entitled

An act relating to sexually explicit material; amending s. 775.0847, F.S.; redefining terms; replacing the term "child pornography" with the term "child sexual abuse material"; defining the term "identifiable minor"; revising the list of circumstances under which specified offenses may be reclassified; amending s. 784.049, F.S.; increasing the monetary damages that an aggrieved person may receive as a result of violations relating to sexual cyberharassment; amending s. 827.071, F.S.; defining and redefining terms; conforming provisions to changes made by the act; creating s. 836.13, F.S.; defining terms; prohibiting the willful and malicious promotion of certain images without consent; providing criminal penalties; providing a civil cause of action; providing applicability; providing construction; creating s. 836.14, F.S.; defining terms; prohibiting a person from obtaining certain images with the intent to promote such images; prohibiting the possession of certain images with intent to promote without consent; prohibiting the promotion of certain images without consent; providing criminal penalties; providing a civil cause of action; providing applicability; providing construction; amending s. 847.001, F.S.; redefining terms; replacing the term "child pornography" with the term "child sexual abuse material"; defining the terms "identifiable minor" and "promote"; amending 847.011; authorizing law

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enforcement officers to arrest certain persons without a warrant; authorizing a search warrant to be issued for further investigation upon proper affidavits being made; amending 847.0137, F.S.; deleting the definition of the term "minor"; redefining the term "transmit"; conforming provisions to changes made by the act; amending s. 921.0022, F.S.; ranking offenses created by this act for purposes of the severity ranking chart of the Criminal Punishment Code; conforming provisions to changes made by the act; amending s. 960.03, F.S.; replacing the term "child pornography" with the term "child sexual abuse material"; conforming provisions to changes made by the act; amending ss. 288.1254 and 847.0141, F.S.; conforming cross-references; amending ss. 39.0138, 92.56, 92.561, 435.07, 456.074, 847.002, 847.01357, 847.0139, 948.06, and 960.197, 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. Section 775.0847, Florida Statutes, is amended to read:

775.0847 Possession or promotion of certain child sexual abuse material ~~images of child pornography~~; reclassification.—

(1) For purposes of this section:

(a) "Child" or "minor" means any person, whose identity is known or unknown, younger ~~less~~ than 18 years of age.

(b) "Child sexual abuse material" ~~"Child pornography"~~

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means:

1. Any image depicting a minor engaged in sexual conduct; or

2. Any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor engaged in sexual conduct.

(c) "Identifiable minor" means a person:

1. Who was a minor at the time the image was created, adapted, or modified, or whose image as a minor was used in the creating, adapting, or modifying of the image; and

2. Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature.

The term may not be construed to require proof of the actual identity of the identifiable minor.

(d) ~~(c)~~ "Sadomasochistic abuse" means 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.

(e) ~~(d)~~ "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.

(f) ~~(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 vagina of the other.

(g) ~~(f)~~ "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

(2) A violation of s. 827.071, s. 847.0135, s. 847.0137, or s. 847.0138 shall be reclassified to the next higher degree as provided in subsection (3) if:

(a) The offender possesses 10 or more images of any form of child sexual abuse material ~~child pornography~~ regardless of content; and

(b) The content of at least one image contains one or more of the following:

1. A child who is younger than the age of 5.

2. Sadomasochistic abuse involving a child.

3. Sexual battery involving a child.

4. Sexual bestiality involving a child.

5. Any motion picture, film, video, or computer-generated motion picture, film, or video ~~movie~~ involving a child, regardless of length and regardless of whether the motion picture, film, video, or computer-generated motion picture, film, or video ~~movie~~ contains sound.

(3)(a) In the case of a felony of the third degree, the offense is reclassified to a felony of the second degree.

(b) In the case of a felony of the second degree, the offense is reclassified to a felony of the first degree.

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 2. Paragraph (b) of subsection (5) of section 784.049, Florida Statutes, is amended to read:

784.049 Sexual cyberharassment.—

(5) An aggrieved person may initiate a civil action against a person who violates this section to obtain all appropriate relief in order to prevent or remedy a violation of this section, including the following:

(b) Monetary damages to include $10,000 ~~$5,000~~ or actual damages incurred as a result of a violation of this section, whichever is greater.

Section 3. Section 827.071, Florida Statutes, is amended to read:

827.071 Sexual performance by a child; child sexual abuse material; penalties.—

(1) As used in this section, the following definitions shall apply:

(a) "Child" or "minor" means any person, whose identity is known or unknown, younger than 18 years of age.

(b) "Child sexual abuse material" means:

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1. Any image depicting a minor engaged in sexual conduct; or

2. Any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor engaged in sexual conduct.

(c) ~~(a)~~ "Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

(d) "Identifiable minor" means a person:

1. Who was a minor at the time the image was created, adapted, or modified, or whose image as a minor was used in the creating, adapting, or modifying of the image; and

2. Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature.

The term may not be construed to require proof of the actual identity of the identifiable minor.

(e) ~~(b)~~ "Intentionally view" means to deliberately, purposefully, and voluntarily view. Proof of intentional viewing requires establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation over any period of time.

(f) ~~(c)~~ "Performance" means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

(g) ~~(d)~~ "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit,

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transmute, publish, distribute, circulate, disseminate, present, exhibit, send, post, share, or advertise or to offer or agree to do the same.

(h) ~~(c)~~ "Sadomasochistic abuse" means 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 from inflicting harm on another or receiving such harm oneself.

(i) ~~(f)~~ "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.

(j) ~~(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 vagina of the other.

(k) ~~(h)~~ "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

(l) ~~(i)~~ "Sexual performance" means any performance or part thereof which includes sexual conduct by a child ~~of less than 18~~

~~years of age~~.

(m) ~~(j)~~ "Simulated" means the explicit depiction of conduct set forth in paragraph (k) ~~(h)~~ which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

(2) A person is guilty of the use of a child in a sexual performance if, knowing the character and content thereof, he or she employs, authorizes, or induces a child ~~less than 18 years of age~~ to engage in a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance. A person who ~~Whoever~~ violates this subsection commits ~~is guilty of~~ a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child ~~less than 18 years of age~~. A person who ~~Whoever~~ violates this subsection commits ~~is guilty of~~ a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) It is unlawful for any person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes child sexual abuse material ~~any sexual conduct by a child~~. The possession of three or more copies of such photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote. A person who ~~Whoever~~ violates this subsection commits ~~is guilty of~~ a felony

of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5)(a) It is unlawful for any 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 child sexual abuse material ~~any sexual conduct by a child~~. The possession, control, or intentional viewing of each such photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or presentation is a separate offense. If such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation includes child sexual abuse material depicting ~~sexual conduct by~~ more than one child, then each such child in each such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation that is knowingly possessed, controlled, or intentionally viewed is a separate offense. A person who violates this paragraph ~~subsection~~ commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Paragraph (a) ~~This subsection~~ does not apply to any material possessed, controlled, or intentionally viewed as part of a law enforcement investigation.

(6) Prosecution of a ~~any~~ person for an offense under this section does ~~shall~~ not prohibit prosecution of that person in this state for a violation of any other law of this state, including a law providing for greater penalties than prescribed in this section or any other crime punishing the sexual

performance or the sexual exploitation of children.

Section 4. Section 836.13, Florida Statutes, is created to read:

836.13 Promotion of an altered sexual depiction; prohibited acts; penalties; applicability.—

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

(a) "Altered sexual depiction" means any visual depiction that, as a result of any type of digital, electronic, mechanical, or other modification, alteration, or adaptation, depicts a realistic version of an identifiable person:

1. With the nude body parts of another person as the nude body parts of the identifiable person;

2. With computer-generated nude body parts as the nude body parts of the identifiable person; or

3. Engaging in sexual conduct as defined in s. 847.001 in which the identifiable person did not engage.

(b) "Identifiable person" means a person who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature.

(c) "Nude body parts" means the human male or female genitals, pubic area, or buttocks with less than fully opaque covering; or the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. The term does not under any circumstances include a mother breastfeeding her baby.

(d) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit,

transmute, publish, distribute, circulate, disseminate, present, exhibit, send, post, share, or advertise or to offer or agree to do the same.

(e) "Visual depiction" includes, but is not limited to, a photograph, picture, image, motion picture, film, video, or representation, regardless of whether such photograph, picture, image, motion picture, film, video, or representation was made, modified, altered, adapted, or produced by digital, electronic, mechanical, or other means.

(2) A person who willfully and maliciously promotes any altered sexual depiction of an identifiable person, without the consent of the identifiable person, and who knows or reasonably should have known that such visual depiction was an altered sexual depiction, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Every act, thing, or transaction prohibited by this section constitutes a separate offense and is punishable as such.

(4) The presence of a disclaimer within an altered sexual depiction which notifies a viewer that the person or persons depicted did not consent to or participate in the creation or promotion of the material, or that the person or persons depicted did not actually perform the actions portrayed, is not a defense and does not relieve a person of criminal liability under this section.

(5) An aggrieved person may initiate a civil action against a person who violates subsection (2) to obtain appropriate relief in order to prevent or remedy a violation of subsection (2), including all of the following:

(a) Injunctive relief.

(b) Monetary damages to include $10,000 or actual damages incurred as a result of a violation of subsection (2), whichever is greater.

(c) Reasonable attorney fees and costs.

(6) The criminal and civil penalties of this section do not apply to:

(a) A provider of an interactive computer service as defined in 47 U.S.C. s. 230(f), of an information service as defined in 47 U.S.C. s. 153, or of a communications service as defined in s. 202.11 which provides the transmission, storage, or caching of electronic communications or messages of others; another related telecommunications or commercial mobile radio service; or content provided by another person;

(b) A law enforcement officer, as defined in s. 943.10, or any local, state, federal, or military law enforcement agency that promotes an altered sexual depiction in connection with the performance of his or her duties as a law enforcement officer or the duties of the law enforcement agency;

(c) A person reporting unlawful activity; or

(d) A person participating in a hearing, trial, or other legal proceeding.

(7) A violation of this section is committed within this state if any conduct that is an element of the offense, or any harm to the depicted person resulting from the offense, occurs within this state.

Section 5. Section 836.14, Florida Statutes, is created to read:

836.14 Unlawfully obtaining, possessing, or promoting a

sexually explicit image.—

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

(a) "Identifiable person" has the same meaning as in s. 836.13.

(b) "Promote" has the same meaning as in s. 836.13.

(c) "Sexually explicit image" means any image depicting nudity as defined in s. 847.001 or a person engaging in sexual conduct as defined in s. 847.001.

(2) A person who knowingly and unlawfully obtains a sexually explicit image of an identifiable person with the intent to promote such image commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who willfully possesses with the intent to promote for the purpose of pecuniary or any other type of financial gain a sexually explicit image of an identifiable person without that person's consent commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who willfully promotes for the purpose of pecuniary or any other financial gain a sexually explicit image of an identifiable person without that person's consent commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Every act, thing, or transaction prohibited by this section constitutes a separate offense and is punishable as such.

(6) An aggrieved person may initiate a civil action against a person who violates this section to obtain all appropriate

relief in order to prevent or remedy a violation of this section, including the following:

(a) Injunctive relief.

(b) Monetary damages to include $10,000 or actual damages incurred as a result of a violation of this section, whichever is greater.

(c) Reasonable attorney fees and costs.

(7) The criminal and civil penalties of this section do not apply to:

(a) A provider of an interactive computer service as defined in 47 U.S.C. s. 230(f), of an information service as defined in 47 U.S.C. s. 153, or of a communications service as defined in s. 202.11 which provides the transmission, storage, or caching of electronic communications or messages of others; another related telecommunications or commercial mobile radio service; or content provided by another person;

(b) A law enforcement officer, as defined in s. 943.10, or any local, state, federal, or military law enforcement agency that disseminates a sexually explicit image in connection with the performance of his or her duties as a law enforcement officer or the duties of the law enforcement agency;

(c) A person reporting unlawful activity;

(d) A person participating in a hearing, trial, or other legal proceeding; or

(e) Sexually explicit images involving voluntary exposure in a public or commercial setting.

(8) A violation of this section is committed within this state if any conduct that is an element of the offense, or any harm to the depicted individual resulting from the offense,

occurs within this state.

Section 6. Present subsections (7) through (11) and (12) through (20) of section 847.001, Florida Statutes, are redesignated as subsections (8) through (12) and (14) through (22), respectively, new subsections (7) and (13) are added to that section, and subsection (3) and present subsections (8), (16), and (19) of that section are amended, to read:

847.001 Definitions.—As used in this chapter, the term:

(3) "Child sexual abuse material" ~~"Child pornography"~~ means:

(a) Any image depicting a minor engaged in sexual conduct; or

(b) Any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor engaged in sexual conduct.

(7) "Identifiable minor" means a person:

(a) Who was a minor at the time the image was created, adapted, or modified, or whose image as a minor was used in the creating, adapting, or modifying of the image; and

(b) Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature.

The term may not be construed to require proof of the actual identity of the identifiable minor.

(9)~~(8)~~ "Minor" or "child" means any person, whose identity is known or unknown, younger than ~~under the age of~~ 18 years of age.

(13) "Promote" means to procure, manufacture, issue, sell,

give, provide, lend, mail, deliver, transfer, transmit, transmute, publish, distribute, circulate, disseminate, present, exhibit, send, post, share, or advertise or to offer or agree to do the same.

(18)~~(16)~~ "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

(21)~~(19)~~ "Simulated" means the explicit depiction of conduct described in subsection (18) ~~(16)~~ which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

Section 7. Subsection (5) of section 847.011, Florida Statutes, is amended to read:

847.011 Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty.—

(5)(a)1. A person may not knowingly sell, lend, give away, distribute, transmit, show, or transmute; offer to sell, lend, give away, distribute, transmit, show, or transmute; have in his or her possession, custody, or control with the intent to sell, lend, give away, distribute, transmit, show, or transmute; or advertise in any manner an obscene, child-like sex doll.

2.a. Except as provided in sub-subparagraph b., a person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. A person who is convicted of violating this paragraph a second or subsequent time commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b)1. Except as provided in subparagraph 2., a person who knowingly has in his or her possession, custody, or control an obscene, child-like sex doll commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. A person who is convicted of violating this paragraph a second or subsequent time commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(c)1. A law enforcement officer may arrest without a warrant any person who he or she has probable cause to believe has violated paragraph (b).

2. Upon proper affidavits being made, a search warrant may be issued to further investigate a violation of paragraph (b), including to search a private dwelling.

Section 8. Subsections (1) through (4) of section 847.0137, Florida Statutes, are amended to read:

847.0137 Transmission of pornography by electronic device or equipment prohibited; penalties.—

(1) As used in this section, the term ~~For purposes of this section:~~

~~(a) "Minor" means any person less than 18 years of age.~~

~~(b)~~ "transmit" means the act of sending and causing to be delivered, including the act of providing access for receiving

and causing to be delivered, any image, information, or data ~~from one or more persons or places to one or more other persons or places~~ over or through any medium, including the Internet or an interconnected network, by use of any electronic equipment or other device.

(2) Notwithstanding ss. 847.012 and 847.0133, any person in this state who knew or reasonably should have known that he or she was transmitting child sexual abuse material ~~child pornography~~, as defined in s. 847.001, to another person in this state or in another jurisdiction commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Notwithstanding ss. 847.012 and 847.0133, any person in any jurisdiction other than this state who knew or reasonably should have known that he or she was transmitting child sexual abuse material ~~child pornography~~, as defined in s. 847.001, to any person in this state commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) This section shall not be construed to prohibit prosecution of a person in this state or another jurisdiction for a violation of any law of this state, including a law providing for greater penalties than prescribed in this section, for the transmission of child sexual abuse material ~~child pornography~~, as defined in s. 847.001, to any person in this state.

The provisions of this section do not apply to subscription-based transmissions such as list servers.

Section 9. Paragraphs (c), (d), and (e) 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.
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 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.

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400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of

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		authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
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.
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.

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831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
836.13(2)	3rd	Person who promotes an altered sexual depiction of an identifiable person without consent.
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
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.,

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			(2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs).
578			
	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.
579			
	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.
580			
	893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
581			
	893.13(6)(a)	3rd	Possession of any

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			controlled substance other than felony possession of cannabis.
582			
	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
583			
	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
584			
	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
585			
	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
586			
	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in

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		obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
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.

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918.13(1)(a)	3rd	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.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.

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499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
517.07(1)	3rd	Failure to register securities.
517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.

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784.075	3rd	Battery on detention or commitment facility staff.
784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
784.081(3)	3rd	Battery on specified official or employee.
784.082(3)	3rd	Battery by detained person on visitor or other detainee.
784.083(3)	3rd	Battery on code inspector.
784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.

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787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
787.07	3rd	Human smuggling.
790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
790.115(2)(c)	3rd	Possessing firearm on school property.
800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
806.135	2nd	Destroying or demolishing a memorial or historic property.
810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
810.06	3rd	Burglary; possession of tools.
810.08(2)(c)	3rd	Trespass on property,

		armed with firearm or dangerous weapon.
812.014(2)(c)3.	3rd	Grand theft, 3rd degree $10,000 or more but less than $20,000.
812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree; specified items.
812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen $300 or more.
817.505(4)(a)	3rd	Patient brokering.
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
817.568(2)(a)	3rd	Fraudulent use of personal identification information.
817.625(2)(a)	3rd	Fraudulent use of

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		scanning device, skimming device, or reencoder.
817.625(2)(c)	3rd	Possess, sell, or deliver skimming device.
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
836.14(2)	3rd	Person who obtains a sexually explicit image of an identifiable person with certain intent.
836.14(3)	3rd	Person who possesses with intent to promote for a certain purpose a sexually explicit image of an identifiable person without consent.
837.02(1)	3rd	Perjury in official

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		proceedings.
837.021(1)	3rd	Make contradictory statements in official proceedings.
838.022	3rd	Official misconduct.
839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
843.021	3rd	Possession of a concealed handcuff key by a person in custody.
843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.

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843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
870.01(3)	2nd	Aggravated rioting.
870.01(5)	2nd	Aggravated inciting a riot.
874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)5. drugs).
914.14(2)	3rd	Witnesses accepting bribes.
914.22(1)	3rd	Force, threaten, etc.,

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		witness, victim, or informant.
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
916.1085 (2)(c)1.	3rd	Introduction of specified contraband into certain DCF facilities.
918.12	3rd	Tampering with jurors.
934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
944.47(1)(a)6.	3rd	Introduction of contraband (cellular telephone or other portable communication device) into correctional institution.
951.22(1)(h),	3rd	Intoxicating drug,

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(j) & (k)		instrumentality or other device to aid escape, or cellular telephone or other portable communication device introduced into county detention facility.

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
322.34(6)	3rd	Careless operation of motor vehicle with

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		suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab

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		trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.
379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
440.381(2)	3rd	Submission of false,

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			misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
671			
	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected $20,000 or more but less than $100,000.
672			
	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
673			
	790.01(2)	3rd	Carrying a concealed firearm.
674			
	790.162	2nd	Threat to throw or discharge destructive device.
675			
	790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent

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			manner.
676			
	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
677			
	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
678			
	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
679			
	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
680			
	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
681			
	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
682			
	812.0145(2)(b)	2nd	Theft from person 65 years of age or older;

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		$10,000 or more but less than $50,000.
812.015 (8)(a) & (c)-(e)	3rd	Retail theft; property stolen is valued at $750 or more and one or more specified acts.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.
812.081(3)	2nd	Trafficking in trade secrets.
812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.
817.234(11)(b)	2nd	Insurance fraud; property value $20,000 or more but less than $100,000.

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817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, $5,000 or more or use of personal identification information of 10 or more persons.
817.611(2)(a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device,

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		skimming device, or reencoder.
825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes child sexual abuse material ~~sexual conduct by a child~~.
827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes child sexual abuse material ~~sexual conduct by a child~~.
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious

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		physical injury, or death.
836.14(4)	2nd	Person who promotes for a certain purpose a sexually explicit image of an identifiable person without consent.
839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
843.01	3rd	Resist officer with violence to person; resist arrest with violence.
847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.

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847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. drugs).
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6.,

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		(2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. drugs) within 1,000 feet of university.
893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) within 1,000 feet of property used

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		for religious services or a specified business site.
893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)5. drugs) within 1,000 feet of public housing facility.
893.13(4)(b)	2nd	Use or hire of minor; deliver to minor other controlled substance.
893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

Section 10. Paragraph (e) of subsection (3) and subsection (10) of section 960.03, Florida Statutes, are amended to read:

960.03 Definitions; ss. 960.01-960.28.—As used in ss. 960.01-960.28, unless the context otherwise requires, the term:

(3) "Crime" means:

(e) A violation of s. 827.071, s. 847.0135, s. 847.0137, or s. 847.0138, related to online sexual exploitation and child

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sexual abuse material ~~child pornography~~.

(10) "Identified victim of child sexual abuse material ~~child pornography~~" means any person who, while under the age of 18, is depicted in any image or movie of child sexual abuse material ~~child pornography~~ and who is identified through a report generated by a law enforcement agency and provided to the National Center for Missing and Exploited Children's Child Victim Identification Program.

Section 11. Paragraph (j) of subsection (1) of section 288.1254, Florida Statutes, is amended to read:

288.1254 Entertainment industry financial incentive program.—

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

(j) "Qualified production" means a production in this state meeting the requirements of this section. The term does not include a production:

1. In which, for the first 2 years of the incentive program, less than 50 percent, and thereafter, less than 60 percent, of the positions that make up its production cast and below-the-line production crew, or, in the case of digital media projects, less than 75 percent of such positions, are filled by legal residents of this state, whose residency is demonstrated by a valid Florida driver license or other state-issued identification confirming residency, or students enrolled full-time in a film-and-entertainment-related course of study at an institution of higher education in this state; or

2. That contains obscene content as defined in s. 847.001 ~~s. 847.001(10)~~.

Section 12. Subsection (1) of section 847.0141, Florida

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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 ~~s. 847.001(9)~~, and is harmful to minors, as 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 nudity, as defined in s. 847.001 ~~s. 847.001(9)~~, and is harmful to minors, as 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 13. Subsection (3) of section 39.0138, Florida Statutes, is amended to read:

39.0138 Criminal history and other records checks; limit on placement of a child.—

(3) The department may not place a child with a person other than a parent if the criminal history records check reveals that the person has been convicted of any felony that falls within any of the following categories:

(a) Child abuse, abandonment, or neglect;

(b) Domestic violence;

(c) Child sexual abuse material ~~Child pornography~~ or other felony in which a child was a victim of the offense; or

(d) Homicide, sexual battery, or other felony involving violence, other than felony assault or felony battery when an adult was the victim of the assault or battery, or resisting arrest with violence.

Section 14. Subsection (3) of section 92.56, Florida Statutes, is amended to read:

92.56 Judicial proceedings and court records involving sexual offenses and human trafficking.—

(3) The state may use a pseudonym instead of the victim's name to designate the victim of a crime described in s. 787.06(3)(a)1., (c)1., or (e)1., in s. 787.06(3)(b), (d), (f), or (g), or in chapter 794 or chapter 800, or of child abuse, aggravated child abuse, or sexual performance by a child as described in chapter 827, or any crime involving the production, possession, or promotion of child sexual abuse material ~~child pornography~~ as described in chapter 847, in all court records and records of court proceedings, both civil and criminal.

Section 15. Section 92.561, Florida Statutes, is amended to read:

92.561 Prohibition on reproduction of child sexual abuse material ~~child pornography~~.—

(1) In a criminal proceeding, any property or material that portrays sexual performance by a child as defined in s. 827.071, or constitutes child sexual abuse material ~~child pornography~~ as defined in s. 847.001, must remain secured or locked in the

care, custody, and control of a law enforcement agency, the state attorney, or the court.

(2) Notwithstanding any law or rule of court, a court shall deny, in a criminal proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that portrays sexual performance by a child or constitutes child sexual abuse material ~~child pornography~~ so long as the state attorney makes the property or material reasonably available to the defendant.

(3) For purposes of this section, property or material is deemed to be reasonably available to the defendant if the state attorney provides ample opportunity at a designated facility for the inspection, viewing, and examination of the property or material that portrays sexual performance by a child or constitutes child sexual abuse material ~~child pornography~~ by the defendant, his or her attorney, or any individual whom the defendant uses as an expert during the discovery process or at a court proceeding.

Section 16. Paragraph (c) of subsection (4) of section 435.07, Florida Statutes, is amended to read:

435.07 Exemptions from disqualification.—Unless otherwise provided by law, the provisions of this section apply to exemptions from disqualification for disqualifying offenses revealed pursuant to background screenings required under this chapter, regardless of whether those disqualifying offenses are listed in this chapter or other laws.

(4)

(c) Disqualification from employment under this chapter may not be removed from, and an exemption may not be granted to, any

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current or prospective child care personnel, as defined in s. 402.302(3), and such a person is disqualified from employment as child care personnel, regardless of any previous exemptions from disqualification, if the person has been registered as a sex offender as described in 42 U.S.C. s. 9858f(c)(1)(C) or has been arrested for and is awaiting final disposition of, has been convicted or found guilty of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, or has been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following provisions of state law or a similar law of another jurisdiction:

1. A felony offense prohibited under any of the following statutes:

a. Chapter 741, relating to domestic violence.

b. Section 782.04, relating to murder.

c. Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.

d. Section 784.021, relating to aggravated assault.

e. Section 784.045, relating to aggravated battery.

f. Section 787.01, relating to kidnapping.

g. Section 787.025, relating to luring or enticing a child.

h. Section 787.04(2), relating to leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent pending custody proceedings.

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i. Section 787.04(3), relating to leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent pending dependency proceedings or proceedings concerning alleged abuse or neglect of a minor.

j. Section 794.011, relating to sexual battery.

k. Former s. 794.041, relating to sexual activity with or solicitation of a child by a person in familial or custodial authority.

l. Section 794.05, relating to unlawful sexual activity with certain minors.

m. Section 794.08, relating to female genital mutilation.

n. Section 806.01, relating to arson.

o. Section 826.04, relating to incest.

p. Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

q. Section 827.04, relating to contributing to the delinquency or dependency of a child.

r. Section 827.071, relating to sexual performance by a child.

s. Chapter 847, relating to child sexual abuse material ~~child pornography~~.

t. Chapter 893, relating to a drug abuse prevention and control offense, if that offense was committed in the preceding 5 years.

u. Section 985.701, relating to sexual misconduct in juvenile justice programs.

2. A misdemeanor offense prohibited under any of the following statutes:

a. Section 784.03, relating to battery, if the victim of the offense was a minor.

b. Section 787.025, relating to luring or enticing a child.

c. Chapter 847, relating to child sexual abuse material ~~child pornography~~.

3. A criminal act committed in another state or under federal law which, if committed in this state, constitutes an offense prohibited under any statute listed in subparagraph 1. or subparagraph 2.

Section 17. Paragraph (z) of subsection (5) of section 456.074, Florida Statutes, is amended to read:

456.074 Certain health care practitioners; immediate suspension of license.—

(5) The department shall issue an emergency order suspending the license of any health care practitioner who is arrested for committing or attempting, soliciting, or conspiring to commit any act that would constitute a violation of any of the following criminal offenses in this state or similar offenses in another jurisdiction:

(z) Section 847.0137, relating to the transmission of child sexual abuse material ~~child pornography~~ by electronic device or equipment.

Section 18. Section 847.002, Florida Statutes, is amended to read:

847.002 Child sexual abuse material ~~Child pornography~~ prosecutions.—

(1) Any law enforcement officer who, pursuant to a criminal investigation, recovers images or movies of child sexual abuse material ~~child pornography~~ shall:

(a) Provide such images or movies to the law enforcement agency representative assigned to the Child Victim Identification Program at the National Center for Missing and Exploited Children, as required by the center's guidelines.

(b) Request the law enforcement agency contact information from the Child Victim Identification Program for any images or movies recovered which contain an identified victim of child sexual abuse material ~~child pornography~~ as defined in s. 960.03.

(c) Provide case information to the Child Victim Identification Program, as required by the National Center for Missing and Exploited Children guidelines, in any case where the law enforcement officer identifies a previously unidentified victim of child sexual abuse material ~~child pornography~~.

(2) Any law enforcement officer submitting a case for prosecution which involves the production, promotion, or possession of child sexual abuse material ~~child pornography~~ shall submit to the designated prosecutor the law enforcement agency contact information provided by the Child Victim Identification Program at the National Center for Missing and Exploited Children, for any images or movies involved in the case which contain the depiction of an identified victim of child sexual abuse material ~~child pornography~~ as defined in s. 960.03.

(3) In every filed case involving an identified victim of child sexual abuse material ~~child pornography~~, as defined in s. 960.03, the prosecuting agency shall enter the following information into the Victims in Child Sexual Abuse Material ~~Child Pornography~~ Tracking Repeat Exploitation database maintained by the Office of the Attorney General:

(a) The case number and agency file number.

(b) The named defendant.

(c) The circuit court division and county.

(d) Current court dates and the status of the case.

(e) Contact information for the prosecutor assigned.

(f) Verification that the prosecutor is or is not in possession of a victim impact statement and will use the statement in sentencing.

Section 19. Subsections (1) and (4) of section 847.01357, Florida Statutes, are amended to read:

847.01357 Exploited children's civil remedy.—

(1) Any person who, while under the age of 18, was a victim of a sexual abuse crime listed in chapter 794, chapter 800, chapter 827, or chapter 847, where any portion of such abuse was used in the production of child sexual abuse material ~~child pornography~~, and who suffers personal or psychological injury as a result of the production, promotion, or possession of such images or movies, may bring an action in an appropriate state court against the producer, promoter, or possessor of such images or movies, regardless of whether the victim is now an adult. In any action brought under this section, a prevailing plaintiff shall recover the actual damages such person sustained and the cost of the suit, including reasonable attorney's fees. Any victim who is awarded damages under this section shall be deemed to have sustained damages of at least $150,000.

(4) It is not a defense to a civil cause of action under this section that the respondent did not know the victim or commit the abuse depicted in any image of child sexual abuse material ~~child pornography~~.

Section 20. Section 847.0139, Florida Statutes, is amended to read:

847.0139 Immunity from civil liability for reporting child sexual abuse material ~~child pornography~~, transmission of child sexual abuse material ~~child pornography~~, or any image, information, or data harmful to minors to a minor in this state.—Any person who reports to a law enforcement officer what the person reasonably believes to be child sexual abuse material ~~child pornography~~, transmission of child sexual abuse material ~~child pornography~~, or any image, information, or data that is harmful to minors to a minor in this state may not be held civilly liable for such reporting. For purposes of this section, such reporting may include furnishing the law enforcement officer with any image, information, or data that the person reasonably believes to be evidence of child sexual abuse material ~~child pornography~~, transmission of child sexual abuse material ~~child pornography~~, or an image, information, or data that is harmful to minors to a minor in this state.

Section 21. Paragraph (c) of subsection (8) of section 948.06, Florida Statutes, is amended to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(8)

(c) For purposes of this section, the term "qualifying offense" means any of the following:

1. Kidnapping or attempted kidnapping under s. 787.01, false imprisonment of a child under the age of 13 under s. 787.02(3), or luring or enticing a child under s. 787.025(2)(b) or (c).

2. Murder or attempted murder under s. 782.04, attempted felony murder under s. 782.051, or manslaughter under s. 782.07.

3. Aggravated battery or attempted aggravated battery under s. 784.045.

4. Sexual battery or attempted sexual battery under s. 794.011(2), (3), (4), or (8)(b) or (c).

5. Lewd or lascivious battery or attempted lewd or lascivious battery under s. 800.04(4), lewd or lascivious molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious conduct under s. 800.04(6)(b), lewd or lascivious exhibition under s. 800.04(7)(b), or lewd or lascivious exhibition on computer under s. 847.0135(5)(b).

6. Robbery or attempted robbery under s. 812.13, carjacking or attempted carjacking under s. 812.133, or home invasion robbery or attempted home invasion robbery under s. 812.135.

7. Lewd or lascivious offense upon or in the presence of an elderly or disabled person or attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person under s. 825.1025.

8. Sexual performance by a child or attempted sexual performance by a child under s. 827.071.

9. Computer pornography under s. 847.0135(2) or (3), transmission of child sexual abuse material ~~child pornography~~ under s. 847.0137, or selling or buying of minors under s. 847.0145.

10. Poisoning food or water under s. 859.01.

11. Abuse of a dead human body under s. 872.06.

12. Any burglary offense or attempted burglary offense that

is either a first degree felony or second degree felony under s. 810.02(2) or (3).

13. Arson or attempted arson under s. 806.01(1).

14. Aggravated assault under s. 784.021.

15. Aggravated stalking under s. 784.048(3), (4), (5), or (7).

16. Aircraft piracy under s. 860.16.

17. Unlawful throwing, placing, or discharging of a destructive device or bomb under s. 790.161(2), (3), or (4).

18. Treason under s. 876.32.

19. Any offense committed in another jurisdiction which would be an offense listed in this paragraph if that offense had been committed in this state.

Section 22. Section 960.197, Florida Statutes, is amended to read:

960.197 Assistance to victims of online sexual exploitation and child sexual abuse material ~~child pornography~~.—

(1) Notwithstanding the criteria set forth in s. 960.13 for crime victim compensation awards, the department may award compensation for counseling and other mental health services to treat psychological injury or trauma to:

(a) A child younger than 18 years of age who suffers psychiatric or psychological injury as a direct result of online sexual exploitation under any provision of s. 827.071, s. 847.0135, s. 847.0137, or s. 847.0138, and who does not otherwise sustain a personal injury or death; or

(b) Any person who, while younger than age 18, was depicted in any image or movie, regardless of length, of child sexual abuse material ~~child pornography~~ as defined in s. 847.001, who

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has been identified by a law enforcement agency or the National Center for Missing and Exploited Children as an identified victim of child sexual abuse material ~~child pornography~~, who suffers psychiatric or psychological injury as a direct result of the crime, and who does not otherwise sustain a personal injury or death.

(2) Compensation under this section is not contingent upon pursuit of a criminal investigation or prosecution.

Section 23. This act shall take effect October 1, 2022.

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The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2.28
Meeting Date

APPROP
Committee

Consent Agend
CS CS 1798
Bill Number or Topic

Amendment Barcode (if applicable)

Name KEITH FLAUGH

Phone 239-250-3320

Address 1390 QUINTANA CT
Street

MARCO ISLAND
City *State* *Zip*

Email KSFLAUGH

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

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FLORIDA CITIZENS ALLIANCE

☑ 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 Appropriations

BILL:	PCS/CS/SB 1800 (711618)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Commerce and Tourism Committee; and Senators Boyd and Bradley
SUBJECT:	Broadband Infrastructure
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Fav/CS**
2.	Hrdlicka	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	Hrdlicka	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1800 creates the Broadband Pole Replacement Program, to be administered by the Office of Broadband (Office) within the Department of Economic Opportunity (department). The program will reimburse eligible broadband Internet service providers for their costs incurred for the removal and replacement of existing utility poles in areas of Florida that are unserved by broadband Internet service.

Reimbursements under the program are limited to 50 percent of the broadband Internet service provider's eligible pole replacement cost or $5,000, whichever is less, in addition to the provider's administrative costs related to the preparation and submission of the application for reimbursement.

The bill also requires the office to report annually on its activities and on the administration of the Broadband Pole Replacement Program and the Broadband Opportunity Program.

The bill does not appropriate any funding to the program or resources to the department to administer the program. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2022.

II. Present Situation:

Broadband Internet Deployment

Fixed and mobile broadband Internet services provide access to numerous employment, education, entertainment, and health care opportunities.[1] Access to a sufficient internet connection has only grown more important during the COVID-19 pandemic, which required many Americans to connect to their family and friends, schooling, work, and even medical appointments over the internet.[2]

Broadband internet is a high speed internet that is faster than dial-up access and is always on; in 2015, the Federal Communications Commission (FCC) defined broadband as 25/3 megabits per second (Mbps), i.e., 25 Mbps (download rate) and 3 Mbps (upload rate).[3] Consumers can receive Broadband internet through several different technologies, including a digital subscriber line (DSL), a cable modem, fiber, wireless, satellite, and broadband over power lines.[4]

While Florida's urban areas are served at a fixed broadband coverage rate of 98 percent, its rural areas are served at a rate of 78.6 percent.[5] This disparity is caused primarily by high per-unit construction costs required to build broadband infrastructure across larger swaths of rural geographic areas.[6] One key factor in deploying broadband infrastructure is access to utility poles, upon which broadband providers affix their infrastructure.[7] Often, broadband providers who seek to expand their infrastructure are met with denied or delayed utility pole access, or are asked to pay an excessive fee for the attachment or to replace the entire pole.[8]

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[1] U.S. Federal Communications Commission (FCC), *2018 Broadband Deployment Report*, at 1 (Feb. 2, 2018), https://docs.fcc.gov/public/attachments/FCC-18-10A1.pdf (last visited Feb. 14, 2022).
[2] FCC, *Emergency Broadband Benefit Report and Order*, at 2-3 (Feb. 26, 2021), https://docs.fcc.gov/public/attachments/FCC-21-29A1.pdf (last visited Feb. 14, 2022).
[3] Congressional Research Service (CRS), *State Broadband Initiatives: Selected State and Local Approaches as Potential Models for Federal Initiatives to Address the Digital Divide*, at 2-3 (Apr. 6, 2020), https://crsreports.congress.gov/product/pdf/R/R46307 (last visited Feb. 14, 2022).
[4] CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, at 1 (Oct. 25, 2019), https://fas.org/sgp/crs/misc/RL30719.pdf (last visited Feb. 14, 2022).
[5] FCC, *2021 Broadband Deployment Report*, at 58 (Jan. 19, 2021), https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf (last visited Feb. 14, 2022). For purposes of this data, "fixed broadband services" are measured at 25 megabits per second downstream and 3 megabits per second upstream.
[6] National Telecommunications and Information Administration, American Broadband Initiative, *Milestones Report*, at 11 (Feb. 13, 2019), https://www.ntia.doc.gov/report/2019/american-broadband-initiative-milestones-report (last visited Feb. 14, 2022). *See also* CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, at 7.
[7] Kristian Stout, Ben Sperry, International Center for Law and Economics, *Issue Brief: Pole Attachments and Broadband Build-out: The Case for Reform*, at 3 (Jul. 2021), https://laweconcenter.org/wp-content/uploads/2021/07/Pole-Attachment-Issue-Brief.pdf (last visited Feb. 14, 2022) (*citing* Petition of NCTA for Expedited Declaratory Ruling, In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84 (Jul. 16, 2020), at 5-9, https://www.ncta.com/sites/default/files/2020-07/071620_17-84_NCTA_Petition_for_Declaratory_Ruling.pdf.)
[8] R Street, *Pole Replacement Explainer*, (Apr. 2021) https://www.rstreet.org/wp-content/uploads/2021/04/explainer23.pdf (last visited Feb. 14, 2022). *See also*, Edward Lopez and Patricia Kravtin, Connect the Future, *Advancing Pole Attachment Policies to Accelerate National Broadband Buildout*, at 3, https://connectthefuture.com/wp-content/uploads/2021/11/Advancing-Pole-Attachment-Policies-To-Accelerate-National-Broadband-Buildout-National-Report.pdf (last visited Feb. 14, 2022).

Communities that lack broadband access can have difficulty attracting new capital investment.[9] Additionally, data indicates that low-income households disproportionately lack access to broadband Internet service, which puts children in those households at risk of falling behind.[10]

Federal Broadband Initiatives

There are several existing and new programs at the federal level dedicated to expanding the availability and access to broadband Internet. For example, the U.S. Department of Agriculture (USDA) has several rural utilities programs to provide a variety of loans and grants to build and expand broadband networks;[11] the U.S. Department of Housing and Urban Development offers block grants that can support broadband infrastructure;[12] and the Department of the Interior launched a mapping tool to allow service providers to locate federal property available for infrastructure development.[13]

The FCC collects and monitors data on broadband deployment in order to identify underserved and unserved localities in the United States through its Digital Opportunity Data Collection Program.[14] The FCC collects information from service providers according to specific reporting standards to create geographic service maps. The service providers must report their service coverage areas, including where their services were available to residences or businesses, and the speed and latency at which their services are delivered.[15] The FCC also set up a website to allow for public input regarding consumers' experiences with broadband.[16] The FCC is in the process of updating its broadband maps with more detailed and precise information.[17] The National Telecommunications and Information Administration (NTIA) within the U.S. Department of Commerce is working to improve coordination between federal programs that fund broadband and statewide efforts.[18]

In January 2020, the FCC established the Rural Digital Opportunity Fund to fund the deployment of broadband networks in rural America. The first phase of the fund began in 2020 and made $16 billion available to target census blocks that are wholly unserved by fixed broadband speeds of at

[9] CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, at 8.
[10] New American Economy Research Fund, *Back to School: A Look at the Internet Access Gap*, (Aug. 6, 2020) https://research.newamericaneconomy.org/report/internet-access-covid-19/ (last visited Feb. 14, 2022).
[11] USDA, *Telecom Programs*, https://www.rd.usda.gov/programs-services/all-programs/telecom-programs (last visited Feb. 14, 2022).
[12] U.S. Department of Housing and Urban Development, *State CDBG Program Broadband Infrastructure FAQs*, (Jan. 7, 2016) https://files.hudexchange.info/resources/documents/State-CDBG-Program-Broadband-Infrastructure-FAQs.pdf (last visited Feb. 14, 2022).
[13] U.S. Department of Interior, *Supporting Broadband Tower Facilities in Rural America on Federal Properties Managed at Interior*, https://www.doi.gov/broadband (last visited Feb. 14, 2022).
[14] FCC, *Establishing the Digital Opportunity Data Collection*, at 1-2 (Jan. 19, 2021), https://www.fcc.gov/document/fcc-takes-next-step-collect-more-precise-broadband-mapping-data (last visited Feb. 14, 2022).
[15] FCC, *Establishing the Digital Opportunity Data Collection*, at 5, 8-16.
[16] FCC, *Broadband Data Collection Consumer Information*, https://www.fcc.gov/BroadbandData/consumers (last visited Feb. 14, 2022).
[17] FCC, *Broadband Data Collection*, (Dec. 15, 2021) https://www.fcc.gov/BroadbandData (last visited Feb. 14, 2022).
[18] Broadband USA, *State Broadband Leaders Network*, (Dec. 19, 2018) https://broadbandusa.ntia.doc.gov/ntia-resources/state-broadband-leaders-network-sbln (last visited Feb. 14, 2022).

least 25 Mbps downstream and 3 Mbps upstream (25/3 Mbps).[19] Florida entities received over $190 million (to be distributed over the next 10 years) in this first round of funding.[20] Phase II of the Fund will target underserved localities, as identified by the FCC's Digital Opportunity Data Collection Program. Using this more precise data, the second phase of FCC grants will make available at least $4.4 billion to target geographic areas where some locations lack access to 25/3 Mbps broadband.[21]

Further, billions in Congressional appropriations have been made over the last year, including funding in the December 2020 COVID-19 relief bill for rural broadband ($300 million) through the NTIA Broadband Infrastructure Development Grants program;[22] the American Rescue Plan Act that included multiple appropriations that could be used for broadband infrastructure, such as $10 billion for the Capital Projects Fund to provide grants to states for the costs of capital projects and $130.2 billion for Community Development Block Grants that can be used for community development projects;[23] and at least $64 billion in the Infrastructure Investment and Jobs Act, signed into law on November 15, 2021, for programs such as the Broadband Equity, Access, and Development Program to be administered by the NTIA to states through matching grants.[24]

U.S. Department of the Treasury Coronavirus Capital Projects Fund

The American Rescue Plan Act allocated $10 billion to eligible governments to carry out capital projects to meet critical needs, with an emphasis on broadband infrastructure.[25] Florida's share is $366 million, and the state submitted its intent to use the funds in December 2021 to expand broadband Internet infrastructure in Florida, among other capital uses.[26]

Presumptively eligible projects under the program include the construction and deployment of broadband infrastructure that is designed to deliver service that reliably meets or exceeds symmetrical speeds of 100 Mbps, or if impracticable, speeds of 100 Mbps downstream and 20 Mbps upstream; projects for digital connectivity that facilitate broadband access; and

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[19] FCC, *Auction 904: Rural Digital Opportunity Fund: Fact Sheet*, https://www.fcc.gov/auction/904/factsheet. FCC, *FCC Launches $20 Billion Rural Digital Opportunity Fund*, (Feb. 7, 2020) https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0 (both last visited Feb. 14, 2022).

[20] Federal Communications Commission, *Auction 904 Winning Bidders: Attachment A*, https://www.fcc.gov/document/auction-904-winning-bidders (last visited Feb. 14, 2022).

[21] FCC, *FCC Launches $20 Billion Rural Digital Opportunity Fund*, at 3 and 4.

[22] Consolidated Appropriations Act of 2021, H.R. 133, 116th Cong. (2021). *See generally*, NTIA, *Overview of Consolidated Appropriations Act, 2021: Broadband Infrastructure Deployment Grants*, https://broadbandusa.ntia.doc.gov/ntia-common-content/overview-consolidated-appropriations-act-2021 (last visited Feb. 14, 2022). These grants will be available to support infrastructure for the deployment of fixed broadband service in a census block with at least one household or business that does not have access to internet at 25/3Mbps or higher.

[23] Pub. L. No. 112-2, ss. 603 and 604 (117th Congress) (H.R. 1319). U.S. Treasury, *FACT SHEET: The American Rescue Plan Will Deliver Immediate Economic Relief to Families*, https://home.treasury.gov/news/press-releases/jy0069 (last visited Feb. 14, 2022).

[24] Pub. L. No. 117-58 (117th Congress) (H.R. 3684). See also, Congressional Research Service, *The Infrastructure Investment and Jobs Act (P.L. 117-58): Summary of the Broadband Provisions in Division F*, (Nov. 16, 2021) https://crsreports.congress.gov/product/pdf/R/R46967 (last visited Feb. 14, 2022).

[25] U.S. Dep't. of Treasury, *Capital Projects Fund*, https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund (last visited Feb. 14, 2022).

[26] *See* Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development, Committee Meeting of January 12, 2022, meeting packet and video at https://www.flsenate.gov/Committees/Show/ATD/ (last visited Feb. 17, 2022).

construction or improvement of certain community facilities.[27] Projects may also be eligible on a case-by-case review, such as investments in capital assets, such as buildings, towers, digital devices and equipment, fiber-optic lines, and broadband networks.[28] Each capital project must:

- Invest in capital assets designed to directly enable work, education, and health monitoring;
- Be designed to address a critical need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency; and
- Be designed to address a critical need of the community to be served by it.

The deadline to submit a grant plan to the U.S. Department of the Treasury is September 24, 2022.

NTIA Broadband Programs

The Infrastructure Investment and Jobs Act includes $65 billion for broadband infrastructure and access. Through this funding, the NTIA will implement multiple programs, including the Broadband Equity, Access, and Deployment (BEAD) program and Enabling Middle Mile Broadband Infrastructure program.[29]

The BEAD program, $42.45 billion in total, is for states to use for broadband deployment, mapping, and adoption projects. Each state will receive an initial allocation of $100 million to support planning efforts and the creation of a 5-year action plan for use of the funds. The remaining funding will be distributed on a formula that considers the number of unserved and high-cost locations in the state; the first priority for funding is for providing broadband to unserved areas (those below 25/3 Mbps), followed by underserved areas (those below 100/20 Mbps), and then serving community anchor institutions (1/1 Gbps).

The Enabling Middle Mile Broadband Infrastructure program, $1 billion in total, is for the construction, improvement, or acquisition of middle mile infrastructure. The goal is to reduce the cost of connecting unserved and underserved areas to the internet backbone. States as well as local governments, technology companies, utilities, telecommunications companies, and others may apply for these funds.

Currently there is no guidance or allocation information publically available for these programs.

Florida's Office of Broadband

In 2020 the Legislature created the Florida Office of Broadband (Office) within the Department of Economic Opportunity.[30] The Office is tasked with developing, marketing, and promoting broadband Internet service in the state.[31]

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[27] U.S. Dep't. of Treasury, *Guidance for the Coronavirus Capital Projects Fund for States, Territories, and Freely Associated States*, at 3, https://home.treasury.gov/system/files/136/Capital-Projects-Fund-Guidance-States-Territories-and-Freely-Associated-States.pdf (last visited Feb. 17, 2022).
[28] *Id*. at 7.
[29] U.S. Dep't. of Commerce, NTIA, *Grants*, https://www.ntia.doc.gov/category/grants (last visited Feb. 17, 2022).
[30] Chapter 2020-26, Laws of Fla.
[31] Section 288.9961(4), F.S. *See also*, Florida Department of Economic Opportunity, Office of Broadband, *About Us*, https://floridajobs.org/community-planning-and-development/broadband/office-of-broadband (last visited Feb. 14, 2022).

Specifically, the Office must:[32]

- Create a strategic plan for increasing the availability and use of broadband Internet service in Florida which must incorporate federal broadband initiatives and also include a process to review and verify public input regarding transmission speeds and availability of broadband Internet service throughout the state;
- Build local technology planning teams representing, among others, libraries, schools, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture in order to identify needs and resources to reduce barriers to the deployment of broadband Internet services;
- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved areas of the state through grant programs;[33]
- Monitor, participate in, and provide input in proceedings of the FCC and other federal agencies related to the geographic availability and deployment of broadband Internet service as necessary to ensure that Florida's rural, unserved, and underserved areas are best positioned to benefit from federal and state broadband deployment programs; and
- Administer Florida's Broadband Opportunity Program.

The department may apply for and accept federal grant funds, enter into necessary or useful contracts, and establish any committee or workgroup to further the above goals. Additionally, the department has rulemaking authority to implement sections 288.9961-288.9963, F.S., relating to the Office.[34]

Broadband Opportunity Program[35]

The Office administers the Broadband Opportunity grant program to expand broadband Internet service to unserved areas of Florida. Grant funds may not be used to provide broadband Internet service to a geographic area where broadband Internet is already deployed by at least one provider.

No funds have been appropriated for the program, and no grants have been made available.

[32] Section 288.9961(4), F.S.
[33] Section 288.9961(2)(f), F.S., defines the term "underserved" to mean a geographic area of this state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 100 Mbps downstream and at least 10 Mbps upstream. Section 288.9961(2)(g), F.S., defines the term "unserved" as a geographic area in which there is no broadband Internet service provider.
[34] Section 288.9961(5), F.S.
[35] Section 288.9962, F.S.

Regulation of Pole Attachments

Utility poles may be installed and owned by different kinds of utilities,[36] such as electrical or telecommunications providers.[37] "Pole attachment" is the process by which communications companies allocate infrastructure on utility poles. Different vertical portions of utility poles are divided for specific uses, including electrical power, telephone, cable television, broadband Internet, and wireless service.[38] The owning entity can charge others to attach their services to its pole. This sharing of the pole resource benefits the public by minimizing "unnecessary and costly duplication of plant for all pole users."[39] When a new attacher seeks access to a pole, it is necessary to evaluate the safety and ability to add the attachment. In many cases, existing attachments must be moved to make room for the new attachment. In some cases, a larger pole is necessary to accommodate a new attachment.[40]

Federal law recognizes state and local government authority to manage the public right-of-way (ROW) on utility poles and to require fair and reasonable compensation from telecommunication providers, on a competitively neutral and nondiscriminatory basis, for the use of such ROW.[41]

Congress began regulating pole attachments in 1978.[42] The Telecommunications Act (Act) of 1996[43] added provisions making access to utility poles mandatory for telecommunications services providers,[44] and providing for nondiscriminatory access, unless there is insufficient capacity and reasons of safety, reliability and generally applicable engineering purposes.[45] Municipalities and rural electric cooperative utilities are exempt from the federal provisions.[46]

A state, however, can assume regulation of pole attachment through a process known as "reverse preemption." This requires a state to expressly assert jurisdiction through state legislation, followed by certification to the FCC that "in so regulating such rates, terms, and conditions, the state has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility

[36] 47 U.S.C. 224(a)(1) (1996), defines "utility" as "any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State."
[37] *See*, Jim Saunders, NEWS SERVICE OF FLORIDA, *FPL, AT&T Battle Over Utility Bills*, (Aug. 1, 2019) https://www.news-press.com/story/news/newswire/2019/08/01/florida-power-light-fpl-at-t-battle-over-utility-bills/1887655001/ (last visited Feb. 14, 2022).
[38] Florida Public Service Commission, *What's on a Utility Pole?*, http://www.psc.state.fl.us/ConsumerAssistance/UtilityPole (last visited Feb. 14, 2022). 47 U.S.C. 224(a)(4), defines "pole attachment" as "any attachment by a cable television system or provider or telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility."
[39] S. REP. NO. 95-580, at 13 (1977), as reprinted in 1978 U.S.C.C.A.N. 109, 121.
[40] FCC, *Third Report and Order and Declaratory Ruling In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, FCC-CIRC 1808-03 (2018) at 4-5.
[41] 47 U.S.C. 253(c).
[42] The Pole Attachment Act of 1978 granted utility pole access to cable companies and was designed to promote utility competition and service to the public. Communications Act Amendments of 1978, Pub. L. No. 950234 (Feb. 21, 1978).
[43] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).
[44] The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. 47 U.S.C. 153(50).
[45] Pub. L. No. 104-104, *codified* at 47 U.S.C. 224(f).
[46] 47 U.S.C. 224(a)(1).

services."[47] As of March 19, 2020, 22 states and the District of Columbia have reverse preemption.[48] In 2021, this regulatory authority was transferred to the Florida Public Service Commission;[49] the PSC is still in the process of adopting rules to complete this transfer.[50]

In September 2018, the FCC issued an order which preempted state and local laws and agreements, including those related to pole attachments, to remove regulatory barriers that would inhibit the deployment of "small cell" infrastructure necessary to support new wireless broadband services.[51] The order provided that state or local fees charged to mobile service providers for deploying small cell sites violate federal law unless they:

- Are a reasonable approximation of the state or local government's costs;
- Only factor in costs that are "objectively reasonable;" and
- Are no higher than fees charged to similarly situated competitors.[52]

Florida Promotional Rates for Wireline Attachment

The Legislature has provided for the promotional rate of $1 per wireline attachment per pole, per year for any new attachment necessary to make broadband service available to an unserved or underserved end user within a municipal electric utility service territory. This rate began July 1, 2021 and ends July 1, 2024.[53]

If a municipal electric utility is required to replace a utility pole due to a broadband provider's attachment, the municipal electric utility may require the broadband provider to reimburse all reasonable costs attributable to the new attachment, minus the salvage value of the pole. A utility cannot require pole replacement to accommodate the broadband provider's pole attachment unless it is necessary to comply with applicable engineering and safety standards. Additionally, if the pole replacement is necessary to correct an existing violation, to bring the pole into compliance with changes in applicable standards, or because the pole is at the end of its useful life, the replacement cost may not be passed on to the broadband provider.[54]

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[47] 47 U.S.C. 224(c)(2).
[48] FCC, *Public Notice: States That Have Certified That They Regulate Pole Attachments*, (Mar. 19, 2020) https://www.fcc.gov/document/states-have-certified-they-regulate-pole-attachments-2 (last visited Feb. 14, 2022).
[49] Chapter 2021-191, Laws of Fla.
[50] Cindy Miller, *What's Up with Pole Attachments in Florida: Energy and Telecom Players Urge Different Approaches*, (Sep. 17, 2021) https://energycentral.com/c/um/whats-pole-attachments-florida-energy-and-telecom-players-urge-different (last visited Feb. 14, 2022).
[51] FCC, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Report and Order*, 33 FCC Rcd 9088 (14), FCC-18-133. *See also* CRS, *Overview of Legal Challenges to the FCC's 5G Order on Small Cell Siting* (Feb. 25, 2019). The order's discussion of preemption begins by interpreting the Telecommunication Act's two relevant preemption provisions: ss. 253 and 332(c)(7). Subject to certain exceptions, these sections preempt state and local requirements that "prohibit or have the effect of prohibiting the ability of any entity" to provide "telecommunications" or "personal wireless services."
[52] CRS, *Overview of Legal Challenges to the FCC's 5G Order on Small Cell Siting*, at 2-3. The order also identifies specific fee limits that are presumptively allowed under federal law. For non-recurring fees, such as up-front applications for small cell site installations, localities may charge up to $500, subject to certain exceptions. For recurring fees, such as access fees, localities may charge up to $270 per year. Higher fees may be charged due to local cost variances.
[53] Section 288.9963(3), F.S.
[54] "Useful life" of a utility pole means not less than 30 years for wood utility poles, and not less than 50 years for concrete, steel, ductile iron, and all other utility poles. Section 288.9963(5), F.S.

III. Effect of Proposed Changes:

Broadband Pole Replacement Program (creating s. 288.9964, F.S.)
The bill creates the Broadband Pole Replacement Program within the Office of Broadband. The Office will accept applications for the reimbursement of eligible pole replacement costs and distribute payments until the funds are exhausted. Eligible pole replacement is the removal of an existing utility pole and its replacement with a new utility pole in order to accommodate the attachment to the new utility pole of facilities used by the provider.[55]

Eligibility

Private businesses or nonprofit corporations that currently provide, or will provide, qualifying broadband service to Florida are eligible for reimbursements under the program. These entities must provide, or commit to providing qualifying broadband service that is capable of delivering Internet access at speeds of at least 100 Mbps downstream and 100 Mbps upstream with a latency at a level sufficient to allow real-time, interactive applications. Additionally, the applicants' pole replacements must occur in unserved areas for the purpose of attaching facilities to provide qualifying broadband service to residences or businesses in that area.[56]

Reimbursements

The Office must reimburse an applicant within 60 days after it receives its completed application. Reimbursements are made on a first-come, first-served basis. The Office will reimburse under the program according to availability of funds. Any application that is pending when appropriated funding is exhausted is denied, but the applicant may reapply if funds are later made available. The Office is required to provide updated information on its website regarding the availability of funds and the date when applications may begin to be accepted.

An application for reimbursement must include the following:
- Information sufficient to establish the number and cost of eligible pole replacements;
- Documentation sufficient to establish that the eligible pole replacements are completed;
- The total reimbursement amount requested, and any state or federal grant funding or accounting information required to justify the amount requested;
- A notarized statement from an officer or agent of the applicant which certifies that the application's contents are true and accurate and that the applicant will comply with applicable law as a condition of receiving reimbursement under the program;
- Receipts to verify the amount of eligible pole replacement costs paid by the applicant; and
- Any other information or documentation required by the office to comply with the requirements or conditions, as applicable, of any federal funding used to pay reimbursements under the program.

[55] It does not include removal and replacement of an existing utility pole by the pole owner or an affiliate, unless the removal is performed as a accommodation to a provider of qualifying broadband service.
[56] The bill defines an "unserved area" as a location in which (1) fixed, terrestrial, retail wireline broadband Internet service is unavailable at the time that the broadband service provider requests to attach its facilities to a pole in that location, and no other person has committed to providing qualifying broadband service; or (2) the applicant is committed under the terms of a state or federal grant to provide qualifying broadband service, provided that the availability of the grant is limited to areas that lack access to fixed, terrestrial, retail wireline broadband Internet service.

An eligible pole replacement cost is the actual cost paid by the applicant to perform a pole replacement, excluding any amount that is otherwise reimbursed through another state or federal broadband grant program or other governmental entity. Specifically, the cost may include:

- The removal and disposal of the existing utility pole;
- The purchase and installation of a replacement utility pole: and
- The transfer of any existing facilities to the replacement utility pole.

An eligible applicant shall receive a reimbursement for each eligible utility pole replacement up to 50 percent of the total amount paid for eligible pole replacement costs, or $5,000, whichever is less. Reimbursements from appropriated federal funds must also be made in compliance with any federal requirements or conditions for use of the funds.

If the applicant broadband Internet service provider cannot provide the information required by the application, it may request that the pole owner that performed the pole replacement submit the required information, including the pole replacement costs paid by the applicant.

Additionally, an applicant that is a pole owner that calculates a pole rental and other fees based on a federal or state-approved formula that includes consideration of the pole owner's expenses, must exclude any expenses reimbursed by this program, paid for by a retail provider of qualifying broadband service, or funded by another state or federal grant.

As a condition of receiving reimbursement, the applicant must certify its compliance with the program, including any federal requirements, and agree to refund with interest any reimbursements or portions thereof if the Office finds that the applicant materially violated any requirement of the program.

Administrative Duties

The Office must publish and update the following information on its website:

- Statistics on the number of applications received, processed, and denied by the program;
- Statistics on the value, number, and status of reimbursements provided under the program, including the names of pole owners and retail providers of qualifying broadband service which received reimbursements under the program; and
- The amount of funds remaining from any appropriation.

The bill specifically authorizes the department to adopt rules to establish the application and the conditions or requirements that must be met in order to use and receive any federal funding appropriated to the program.

Reporting by the Office of Broadband

The bill requires the Office to report annually, by January 31, on the activities of the office to meet the requirements of s. 288.9961, F.S., including on any applications made and use of federal funds for broadband infrastructure, deployment, or access. If funds are appropriated to the Broadband Opportunity Program or the Broadband Pole Replacement Program, then the office must report on the programs as well.

Effective Date

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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may ultimately help to provide more affordable broadband Internet service to Florida's communities by increasing related infrastructure. The bill will benefit eligible providers by assisting them to expand their services.

C. Government Sector Impact:

The bill does not appropriate any funds to the Broadband Pole Replacement Program.

It is unclear whether the department will require additional funds or positions to administer the program. SB 2500 provides an additional FTE to the department for the Office of Broadband.

For the bill as originally filed, the Department of Economic Opportunity provided a high estimate for resources necessary to implement the bill, including:

- $880,219 ($35,587 nonrecurring) and 10 FTE;

- $1 million for staff augmentation (8-12 full time and 3-5 part-time staff); and
- $2 million ($1.5 million nonrecurring) for IT software licenses to track projects and awards.

With the changes to the bill, it is likely that this level of resources will not be needed; however any exact impact is unknown at this time. The department may also incur costs for reporting and posting information on its website, which can be done within existing resources.[57]

VI. Technical Deficiencies:

Lines 177-179 should be removed from the bill, as the related provisions were removed from the bill (related to reimbursement of certain administrative expenses).

VII. Related Issues:

The Department of Economic Opportunity, in its agency analysis of the bill, states that the U.S. Treasury had advised the department "against the use of Capital Projects Fund for utility pole replacement or general construction projects."[58]

SB 1802 is a linked bill that creates the Broadband Pole Replacement Trust Fund.

VIII. Statutes Affected:

This bill substantially amends section 288.9961 of the Florida Statutes.

This bill creates section 288.9964 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.)

PCS (711618) by Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development):
The committee substitute:

- Requires the Office of Broadband to report annually on its activities, including on the Broadband Pole Replacement Program and the Broadband Opportunity Program;
- Removes references to the Broadband Pole Replacement Trust Fund and related provisions;
- Removes the appropriation to the Broadband Opportunity Program;
- Allows for reimbursement of pole replacement costs made after July 1, 2022;
- Provides for reimbursement on a first-come, first-served basis;

[57] Department of Economic Opportunity, *2022 Agency Legislative Bill Analysis SB 1800*, February 21, 2022 (on file with the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development).
[58] *Id*.

- Requires the Office of Broadband to publish an application form by September 1, 2022;
- Clarifies the documentation necessary for the application;
- Removes the authorization for reimbursement of administrative costs to submit the application;
- Requires any reimbursements made with funds appropriated from federal funds to also meet federal grant requirements;
- Clarifies the rulemaking authority; and
- Changes the effective date to July 1, 2022.

CS by Commerce and Tourism on January 24, 2022:
Inserts the bill number assigned to linked bill, CS/SB 1802, which creates the Broadband Pole Replacement Program, in the contingent effective date.

B. Amendments:

None.

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

711618

576-03265-22

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Transportation, Tourism, and Economic Development)

A bill to be entitled

An act relating to broadband infrastructure; amending s. 288.9961, F.S.; revising the duties of the Florida Office of Broadband to include administering the Broadband Pole Replacement Program; requiring the office to submit an annual report to the Governor and the Legislature by a specified date; creating s. 288.9964, F.S.; providing legislative findings; defining terms; establishing the Broadband Pole Replacement Program within the office; providing responsibilities of the office; providing eligibility requirements for reimbursement under the program; providing that reimbursements are subject to the availability of certain funds; providing that certain denied applicants may reapply in certain circumstances; providing requirements for the program application; requiring the office to provide certain reimbursements within a certain period of time; authorizing an applicant to request certain information from a pole owner under certain circumstances; requiring an applicant to meet certain conditions; requiring the office to publish and continually update certain information on its public website; authorizing rulemaking; providing an effective date.

711618

576-03265-22

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

Section 1. Paragraph (g) is added to subsection (4) and subsection (6) is added to section 288.9961, Florida Statutes, to read:

288.9961 Promotion of broadband adoption; Florida Office of Broadband.—

(4) FLORIDA OFFICE OF BROADBAND.—The Florida Office of Broadband is created within the Division of Community Development in the department for the purpose of developing, marketing, and promoting broadband Internet services in this state. The office, in the performance of its duties, shall do all of the following:

(g) Administer the Broadband Pole Replacement Program established in s. 288.9964.

(6) REPORT.—Annually by January 31, the office shall provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which provides information on activities of the office to meet the requirements of this section, including any applications made and use of federal funds for broadband Internet service infrastructure, deployment, or access. The report shall also include, if funds have been appropriated to the programs, updates and information on administration and applications processed under the Broadband Opportunity Program established in s. 288.9962 and the Broadband Pole Replacement Program established in s. 288.9964, including identifying and examining the deployment of broadband infrastructure and technology facilitated by reimbursements provided under the Broadband Pole Replacement Program.

Section 2. Section 288.9964, Florida Statutes, is created to read:

288.9964 Broadband Pole Replacement Program.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that a broadband pole replacement program administered by the Florida Office of Broadband is necessary to further the state's goal of expanding and accelerating access to broadband service in unserved areas throughout this state.

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

(a) "Applicant" means a private business, including a corporation, a limited liability company, a partnership, a nonprofit corporation, or any other private business entity that provides or will provide qualifying broadband service in this state.

(b) "Application" means an application made under this section for an eligible pole replacement reimbursement.

(c) "Broadband Internet service" means a service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 25 megabits per second downstream and 3 megabits per second upstream.

(d) "Eligible pole replacement" means the removal of an existing utility pole and its replacement with a new utility pole in an unserved area in order to accommodate the attachment to such new utility pole of facilities used in whole or in part by a retail provider of qualifying broadband service for the purpose of providing qualifying broadband service access to residences or businesses in that unserved area. The term does not include the removal and replacement of an existing utility pole by the pole owner or an affiliated company unless the

removal or replacement is performed as an accommodation to a provider of qualifying broadband service.

(e) "Eligible pole replacement costs" means the actual costs to perform an eligible pole replacement which are paid by an applicant, excluding any amount separately reimbursed through another state or federal broadband grant program or by some other governmental entity. The term includes the costs to remove and dispose of the existing utility pole, to purchase and install a replacement utility pole, and to transfer any existing facilities to the replacement utility pole.

(f) "Office" means the Florida Office of Broadband.

(g) "Pole" means any pole used in whole or in part for wire communications or electric distribution.

(h) "Pole owner" means any electric utility as defined in s. 366.02(2), public utility as defined in s. 366.02(1), communications services provider as defined in s. 366.02(5), cable television operator, or local exchange carrier that owns or controls a pole.

(i) "Program" means the Broadband Pole Replacement Program established under this section.

(j) "Qualifying broadband service" means a fixed, terrestrial, retail wireline broadband Internet service capable of delivering Internet access at speeds of at least 100 megabits per second both downstream and upstream with latency at a level sufficient to allow real-time, interactive applications.

(k) "Reimbursed through another state or federal broadband grant program" means, with respect to eligible pole replacement costs, that an applicant paying such costs has received or is entitled to receive reimbursement for such costs under the terms

of another state or federal broadband grant program for the deployment of broadband facilities, whether through a specific reimbursement for such costs or through support payments that equal or exceed the person's actual deployment costs, including eligible pole replacement costs. The term does not include the receipt of a state or federal grant that covers only a portion of the applicant's actual deployment costs, including eligible pole replacement costs, if the applicant pays the eligible pole replacement costs with its own funds.

(l) "Unserved area" means a location in which:

1. At the time of a request by a retail provider of qualifying broadband service to attach facilities to a pole in such location, fixed, terrestrial, retail wireline broadband Internet service is unavailable, according to the latest available broadband deployment data from the Federal Communications Commission, provided that no person other than the applicant has committed to providing qualifying broadband service in such area; or

2. An applicant is committed under the terms of a federal or state grant to provide qualifying broadband service, provided that the availability of such grant is limited to areas lacking access to fixed, terrestrial, retail wireline broadband Internet service.

(3) BROADBAND POLE REPLACEMENT PROGRAM.—

(a) The Broadband Pole Replacement Program is established within the Florida Office of Broadband. The office shall administer the program and is responsible for receiving and reviewing applications and distributing reimbursements under the program.

(b) Any applicant that pays eligible pole replacement costs after July 1, 2022, is eligible for reimbursement of such costs under the program and may submit an application for reimbursement in accordance with this section.

(c) Reimbursements provided under the program are subject to the availability of funds. The office shall accept applications for reimbursement until all funds appropriated to the program are exhausted. Reimbursements shall be made on a first-come, first-served basis. The office shall publish on its website information regarding the availability of funds and the date when applications may begin to be submitted.

(d) An application pending when all funds are exhausted is deemed denied; however, the applicant may reapply if sufficient funds are later made available.

(e) By September 1, 2022, the office shall publish an application form for reimbursement of eligible pole replacement costs under the program. The application must require the following:

1. Information sufficient to establish the number and cost of eligible pole replacements that qualify for reimbursement under the program.

2. Documentation sufficient to establish that the claimed eligible pole replacements have been completed.

3. The total reimbursement amount requested and any state or federal grant funding or accounting information required to justify the amount requested.

4. A notarized statement from an officer or agent of the applicant certifying that the contents of the application are true and accurate and that such applicant will comply with the

requirements of this section as a condition of receiving reimbursement under the program.

5. Receipts verifying the amount of eligible pole replacement costs paid by the applicant.

6. Documentation sufficient to establish the actual and reasonable administrative expenses paid by such applicant in preparing and submitting the application.

7. Any other information or documentation required by the department to comply with the requirements or conditions, as applicable, of any federal funding used to pay reimbursements under the program.

(f) Within 60 days after receipt of a complete application that establishes an applicant's eligible pole replacement costs, the office shall reimburse the applicant in an amount equal to up to 50 percent of the total amount paid or $5,000, whichever is less, by such applicant for eligible pole replacement costs.

(g) Reimbursements made under this program from funds appropriated from any federal funding received by this state must also be made in compliance with any requirements or conditions for use of such federal funds.

(h) If the information required for application is not otherwise reasonably available to an applicant, an applicant may request that a pole owner performing an eligible pole replacement provide the number and costs of the pole replacements and receipts verifying the amount of eligible pole replacement costs paid by the applicant.

(i) As a condition of receiving reimbursement under the program, an applicant must:

1. Certify its compliance with the requirements of this

section and with any federal conditions or requirements for use of federal funds as applicable; and

2. Agree to refund with interest at the applicable Federal Funds rate as specified by s. 670.506 any reimbursements or portions thereof received under the program to the department, at the direction of the office, if the office finds, upon substantial evidence and after providing such applicant with notice and an opportunity to respond, that such applicant materially violated a requirement of this section with respect to such reimbursements or portions thereof. Any funds received by the office under this subparagraph shall be deposited into the fund from which the appropriation was made.

(j) If applicable, an applicant that is a pole owner that calculates its pole rental and other fees on the basis of a formula required or approved by federal or state law or regulation which includes consideration of the pole owner's expenses must, as a condition of receiving reimbursement under the program, exclude from such expenses any eligible pole replacement costs that were reimbursed by the program, paid for by a retail provider of qualifying broadband service, or funded by another state or federal grant.

(4) TRANSPARENCY.—The office shall publish and continually update the following information on its website:

(a) Statistics on the number of applications received, processed, and denied under the program.

(b) Statistics on the value, number, and status of reimbursements provided under the program, including the names of pole owners and retail providers of qualifying broadband service which received reimbursements under the program.

(c) The amount of funds remaining from any appropriation.

(5) RULEMAKING.—The department is authorized to adopt rules to establish the application and the conditions or requirements that must be met in order to use and receive any federal funding appropriated to the program.

Section 3. This act shall take effect July 1, 2022.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1800
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Commerce and Tourism Committee; and Senators Boyd and Bradley
SUBJECT:	Broadband Infrastructure
DATE:	March 2, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Fav/CS**
2.	Hrdlicka	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	Hrdlicka	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1800 creates the Broadband Pole Replacement Program, to be administered by the Office of Broadband (Office) within the Department of Economic Opportunity (department). The program will reimburse eligible broadband Internet service providers for their costs incurred for the removal and replacement of existing utility poles in areas of Florida that are unserved by broadband Internet service.

Reimbursements under the program are limited to 50 percent of the broadband Internet service provider's eligible pole replacement cost or $5,000, whichever is less, in addition to the provider's administrative costs related to the preparation and submission of the application for reimbursement.

The bill also requires the office to report annually on its activities and on the administration of the Broadband Pole Replacement Program and the Broadband Opportunity Program.

The bill does not appropriate any funding to the program or resources to the department to administer the program. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2022.

II. Present Situation:

Broadband Internet Deployment

Fixed and mobile broadband Internet services provide access to numerous employment, education, entertainment, and health care opportunities.[1] Access to a sufficient internet connection has only grown more important during the COVID-19 pandemic, which required many Americans to connect to their family and friends, schooling, work, and even medical appointments over the internet.[2]

Broadband internet is a high speed internet that is faster than dial-up access and is always on; in 2015, the Federal Communications Commission (FCC) defined broadband as 25/3 megabits per second (Mbps), i.e., 25 Mbps (download rate) and 3 Mbps (upload rate).[3] Consumers can receive Broadband internet through several different technologies, including a digital subscriber line (DSL), a cable modem, fiber, wireless, satellite, and broadband over power lines.[4]

While Florida's urban areas are served at a fixed broadband coverage rate of 98 percent, its rural areas are served at a rate of 78.6 percent.[5] This disparity is caused primarily by high per-unit construction costs required to build broadband infrastructure across larger swaths of rural geographic areas.[6] One key factor in deploying broadband infrastructure is access to utility poles, upon which broadband providers affix their infrastructure.[7] Often, broadband providers who seek to expand their infrastructure are met with denied or delayed utility pole access, or are asked to pay an excessive fee for the attachment or to replace the entire pole.[8]

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[1] U.S. Federal Communications Commission (FCC), *2018 Broadband Deployment Report*, at 1 (Feb. 2, 2018), https://docs.fcc.gov/public/attachments/FCC-18-10A1.pdf (last visited Feb. 14, 2022).
[2] FCC, *Emergency Broadband Benefit Report and Order*, at 2-3 (Feb. 26, 2021), https://docs.fcc.gov/public/attachments/FCC-21-29A1.pdf (last visited Feb. 14, 2022).
[3] Congressional Research Service (CRS), *State Broadband Initiatives: Selected State and Local Approaches as Potential Models for Federal Initiatives to Address the Digital Divide*, at 2-3 (Apr. 6, 2020), https://crsreports.congress.gov/product/pdf/R/R46307 (last visited Feb. 14, 2022).
[4] CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, at 1 (Oct. 25, 2019), https://fas.org/sgp/crs/misc/RL30719.pdf (last visited Feb. 14, 2022).
[5] FCC, *2021 Broadband Deployment Report*, at 58 (Jan. 19, 2021), https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf (last visited Feb. 14, 2022). For purposes of this data, "fixed broadband services" are measured at 25 megabits per second downstream and 3 megabits per second upstream.
[6] National Telecommunications and Information Administration, American Broadband Initiative, *Milestones Report*, at 11 (Feb. 13, 2019), https://www.ntia.doc.gov/report/2019/american-broadband-initiative-milestones-report (last visited Feb. 14, 2022). *See also* CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, at 7.
[7] Kristian Stout, Ben Sperry, International Center for Law and Economics, *Issue Brief: Pole Attachments and Broadband Build-out: The Case for Reform*, at 3 (Jul. 2021), https://laweconcenter.org/wp-content/uploads/2021/07/Pole-Attachment-Issue-Brief.pdf (last visited Feb. 14, 2022) (*citing* Petition of NCTA for Expedited Declaratory Ruling, In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84 (Jul. 16, 2020), at 5-9, https://www.ncta.com/sites/default/files/2020-07/071620_17-84_NCTA_Petition_for_Declaratory_Ruling.pdf.)
[8] R Street, *Pole Replacement Explainer*, (Apr. 2021) https://www.rstreet.org/wp-content/uploads/2021/04/explainer23.pdf (last visited Feb. 14, 2022). *See also*, Edward Lopez and Patricia Kravtin, Connect the Future, *Advancing Pole Attachment Policies to Accelerate National Broadband Buildout*, at 3, https://connectthefuture.com/wp-content/uploads/2021/11/Advancing-Pole-Attachment-Policies-To-Accelerate-National-Broadband-Buildout-National-Report.pdf (last visited Feb. 14, 2022).

Communities that lack broadband access can have difficulty attracting new capital investment.[9] Additionally, data indicates that low-income households disproportionately lack access to broadband Internet service, which puts children in those households at risk of falling behind.[10]

Federal Broadband Initiatives

There are several existing and new programs at the federal level dedicated to expanding the availability and access to broadband Internet. For example, the U.S. Department of Agriculture (USDA) has several rural utilities programs to provide a variety of loans and grants to build and expand broadband networks;[11] the U.S. Department of Housing and Urban Development offers block grants that can support broadband infrastructure;[12] and the Department of the Interior launched a mapping tool to allow service providers to locate federal property available for infrastructure development.[13]

The FCC collects and monitors data on broadband deployment in order to identify underserved and unserved localities in the United States through its Digital Opportunity Data Collection Program.[14] The FCC collects information from service providers according to specific reporting standards to create geographic service maps. The service providers must report their service coverage areas, including where their services were available to residences or businesses, and the speed and latency at which their services are delivered.[15] The FCC also set up a website to allow for public input regarding consumers' experiences with broadband.[16] The FCC is in the process of updating its broadband maps with more detailed and precise information.[17] The National Telecommunications and Information Administration (NTIA) within the U.S. Department of Commerce is working to improve coordination between federal programs that fund broadband and statewide efforts.[18]

In January 2020, the FCC established the Rural Digital Opportunity Fund to fund the deployment of broadband networks in rural America. The first phase of the fund began in 2020 and made $16 billion available to target census blocks that are wholly unserved by fixed broadband speeds of at

[9] CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, at 8.
[10] New American Economy Research Fund, *Back to School: A Look at the Internet Access Gap*, (Aug. 6, 2020) https://research.newamericaneconomy.org/report/internet-access-covid-19/ (last visited Feb. 14, 2022).
[11] USDA, *Telecom Programs*, https://www.rd.usda.gov/programs-services/all-programs/telecom-programs (last visited Feb. 14, 2022).
[12] U.S. Department of Housing and Urban Development, *State CDBG Program Broadband Infrastructure FAQs*, (Jan. 7, 2016) https://files.hudexchange.info/resources/documents/State-CDBG-Program-Broadband-Infrastructure-FAQs.pdf (last visited Feb. 14, 2022).
[13] U.S. Department of Interior, *Supporting Broadband Tower Facilities in Rural America on Federal Properties Managed at Interior*, https://www.doi.gov/broadband (last visited Feb. 14, 2022).
[14] FCC, *Establishing the Digital Opportunity Data Collection*, at 1-2 (Jan. 19, 2021), https://www.fcc.gov/document/fcc-takes-next-step-collect-more-precise-broadband-mapping-data (last visited Feb. 14, 2022).
[15] FCC, *Establishing the Digital Opportunity Data Collection*, at 5, 8-16.
[16] FCC, *Broadband Data Collection Consumer Information*, https://www.fcc.gov/BroadbandData/consumers (last visited Feb. 14, 2022).
[17] FCC, *Broadband Data Collection*, (Dec. 15, 2021) https://www.fcc.gov/BroadbandData (last visited Feb. 14, 2022).
[18] Broadband USA, *State Broadband Leaders Network*, (Dec. 19, 2018) https://broadbandusa.ntia.doc.gov/ntia-resources/state-broadband-leaders-network-sbln (last visited Feb. 14, 2022).

least 25 Mbps downstream and 3 Mbps upstream (25/3 Mbps).[19] Florida entities received over $190 million (to be distributed over the next 10 years) in this first round of funding.[20] Phase II of the Fund will target underserved localities, as identified by the FCC's Digital Opportunity Data Collection Program. Using this more precise data, the second phase of FCC grants will make available at least $4.4 billion to target geographic areas where some locations lack access to 25/3 Mbps broadband.[21]

Further, billions in Congressional appropriations have been made over the last year, including funding in the December 2020 COVID-19 relief bill for rural broadband ($300 million) through the NTIA Broadband Infrastructure Development Grants program;[22] the American Rescue Plan Act that included multiple appropriations that could be used for broadband infrastructure, such as $10 billion for the Capital Projects Fund to provide grants to states for the costs of capital projects and $130.2 billion for Community Development Block Grants that can be used for community development projects;[23] and at least $64 billion in the Infrastructure Investment and Jobs Act, signed into law on November 15, 2021, for programs such as the Broadband Equity, Access, and Development Program to be administered by the NTIA to states through matching grants.[24]

U.S. Department of the Treasury Coronavirus Capital Projects Fund

The American Rescue Plan Act allocated $10 billion to eligible governments to carry out capital projects to meet critical needs, with an emphasis on broadband infrastructure.[25] Florida's share is $366 million, and the state submitted its intent to use the funds in December 2021 to expand broadband Internet infrastructure in Florida, among other capital uses.[26]

Presumptively eligible projects under the program include the construction and deployment of broadband infrastructure that is designed to deliver service that reliably meets or exceeds symmetrical speeds of 100 Mbps, or if impracticable, speeds of 100 Mbps downstream and 20 Mbps upstream; projects for digital connectivity that facilitate broadband access; and

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[19] FCC, *Auction 904: Rural Digital Opportunity Fund: Fact Sheet*, https://www.fcc.gov/auction/904/factsheet. FCC, *FCC Launches $20 Billion Rural Digital Opportunity Fund*, (Feb. 7, 2020) https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0 (both last visited Feb. 14, 2022).

[20] Federal Communications Commission, *Auction 904 Winning Bidders: Attachment A*, https://www.fcc.gov/document/auction-904-winning-bidders (last visited Feb. 14, 2022).

[21] FCC, *FCC Launches $20 Billion Rural Digital Opportunity Fund*, at 3 and 4.

[22] Consolidated Appropriations Act of 2021, H.R. 133, 116th Cong. (2021). *See generally*, NTIA, *Overview of Consolidated Appropriations Act, 2021: Broadband Infrastructure Deployment Grants*, https://broadbandusa.ntia.doc.gov/ntia-common-content/overview-consolidated-appropriations-act-2021 (last visited Feb. 14, 2022). These grants will be available to support infrastructure for the deployment of fixed broadband service in a census block with at least one household or business that does not have access to internet at 25/3Mbps or higher.

[23] Pub. L. No. 112-2, ss. 603 and 604 (117th Congress) (H.R. 1319). U.S. Treasury, *FACT SHEET: The American Rescue Plan Will Deliver Immediate Economic Relief to Families*, https://home.treasury.gov/news/press-releases/jy0069 (last visited Feb. 14, 2022).

[24] Pub. L. No. 117-58 (117th Congress) (H.R. 3684). See also, Congressional Research Service, *The Infrastructure Investment and Jobs Act (P.L. 117-58): Summary of the Broadband Provisions in Division F*, (Nov. 16, 2021) https://crsreports.congress.gov/product/pdf/R/R46967 (last visited Feb. 14, 2022).

[25] U.S. Dep't. of Treasury, *Capital Projects Fund*, https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund (last visited Feb. 14, 2022).

[26] *See* Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development, Committee Meeting of January 12, 2022, meeting packet and video at https://www.flsenate.gov/Committees/Show/ATD/ (last visited Feb. 17, 2022).

construction or improvement of certain community facilities.[27] Projects may also be eligible on a case-by-case review, such as investments in capital assets, such as buildings, towers, digital devices and equipment, fiber-optic lines, and broadband networks.[28] Each capital project must:

- Invest in capital assets designed to directly enable work, education, and health monitoring;
- Be designed to address a critical need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency; and
- Be designed to address a critical need of the community to be served by it.

The deadline to submit a grant plan to the U.S. Department of the Treasury is September 24, 2022.

NTIA Broadband Programs

The Infrastructure Investment and Jobs Act includes $65 billion for broadband infrastructure and access. Through this funding, the NTIA will implement multiple programs, including the Broadband Equity, Access, and Deployment (BEAD) program and Enabling Middle Mile Broadband Infrastructure program.[29]

The BEAD program, $42.45 billion in total, is for states to use for broadband deployment, mapping, and adoption projects. Each state will receive an initial allocation of $100 million to support planning efforts and the creation of a 5-year action plan for use of the funds. The remaining funding will be distributed on a formula that considers the number of unserved and high-cost locations in the state; the first priority for funding is for providing broadband to unserved areas (those below 25/3 Mbps), followed by underserved areas (those below 100/20 Mbps), and then serving community anchor institutions (1/1 Gbps).

The Enabling Middle Mile Broadband Infrastructure program, $1 billion in total, is for the construction, improvement, or acquisition of middle mile infrastructure. The goal is to reduce the cost of connecting unserved and underserved areas to the internet backbone. States as well as local governments, technology companies, utilities, telecommunications companies, and others may apply for these funds.

Currently there is no guidance or allocation information publically available for these programs.

Florida's Office of Broadband

In 2020 the Legislature created the Florida Office of Broadband (Office) within the Department of Economic Opportunity.[30] The Office is tasked with developing, marketing, and promoting broadband Internet service in the state.[31]

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[27] U.S. Dep't. of Treasury, *Guidance for the Coronavirus Capital Projects Fund for States, Territories, and Freely Associated States*, at 3, https://home.treasury.gov/system/files/136/Capital-Projects-Fund-Guidance-States-Territories-and-Freely-Associated-States.pdf (last visited Feb. 17, 2022).
[28] *Id*. at 7.
[29] U.S. Dep't. of Commerce, NTIA, *Grants*, https://www.ntia.doc.gov/category/grants (last visited Feb. 17, 2022).
[30] Chapter 2020-26, Laws of Fla.
[31] Section 288.9961(4), F.S. *See also*, Florida Department of Economic Opportunity, Office of Broadband, *About Us*, https://floridajobs.org/community-planning-and-development/broadband/office-of-broadband (last visited Feb. 14, 2022).

Specifically, the Office must:[32]

- Create a strategic plan for increasing the availability and use of broadband Internet service in Florida which must incorporate federal broadband initiatives and also include a process to review and verify public input regarding transmission speeds and availability of broadband Internet service throughout the state;
- Build local technology planning teams representing, among others, libraries, schools, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture in order to identify needs and resources to reduce barriers to the deployment of broadband Internet services;
- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved areas of the state through grant programs;[33]
- Monitor, participate in, and provide input in proceedings of the FCC and other federal agencies related to the geographic availability and deployment of broadband Internet service as necessary to ensure that Florida's rural, unserved, and underserved areas are best positioned to benefit from federal and state broadband deployment programs; and
- Administer Florida's Broadband Opportunity Program.

The department may apply for and accept federal grant funds, enter into necessary or useful contracts, and establish any committee or workgroup to further the above goals. Additionally, the department has rulemaking authority to implement sections 288.9961-288.9963, F.S., relating to the Office.[34]

Broadband Opportunity Program[35]

The Office administers the Broadband Opportunity grant program to expand broadband Internet service to unserved areas of Florida. Grant funds may not be used to provide broadband Internet service to a geographic area where broadband Internet is already deployed by at least one provider.

No funds have been appropriated for the program, and no grants have been made available.

[32] Section 288.9961(4), F.S.
[33] Section 288.9961(2)(f), F.S., defines the term "underserved" to mean a geographic area of this state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 100 Mbps downstream and at least 10 Mbps upstream. Section 288.9961(2)(g), F.S., defines the term "unserved" as a geographic area in which there is no broadband Internet service provider.
[34] Section 288.9961(5), F.S.
[35] Section 288.9962, F.S.

Regulation of Pole Attachments

Utility poles may be installed and owned by different kinds of utilities,[36] such as electrical or telecommunications providers.[37] "Pole attachment" is the process by which communications companies allocate infrastructure on utility poles. Different vertical portions of utility poles are divided for specific uses, including electrical power, telephone, cable television, broadband Internet, and wireless service.[38] The owning entity can charge others to attach their services to its pole. This sharing of the pole resource benefits the public by minimizing "unnecessary and costly duplication of plant for all pole users."[39] When a new attacher seeks access to a pole, it is necessary to evaluate the safety and ability to add the attachment. In many cases, existing attachments must be moved to make room for the new attachment. In some cases, a larger pole is necessary to accommodate a new attachment.[40]

Federal law recognizes state and local government authority to manage the public right-of-way (ROW) on utility poles and to require fair and reasonable compensation from telecommunication providers, on a competitively neutral and nondiscriminatory basis, for the use of such ROW.[41]

Congress began regulating pole attachments in 1978.[42] The Telecommunications Act (Act) of 1996[43] added provisions making access to utility poles mandatory for telecommunications services providers,[44] and providing for nondiscriminatory access, unless there is insufficient capacity and reasons of safety, reliability and generally applicable engineering purposes.[45] Municipalities and rural electric cooperative utilities are exempt from the federal provisions.[46]

A state, however, can assume regulation of pole attachment through a process known as "reverse preemption." This requires a state to expressly assert jurisdiction through state legislation, followed by certification to the FCC that "in so regulating such rates, terms, and conditions, the state has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility

[36] 47 U.S.C. 224(a)(1) (1996), defines "utility" as "any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State."
[37] *See*, Jim Saunders, NEWS SERVICE OF FLORIDA, *FPL, AT&T Battle Over Utility Bills*, (Aug. 1, 2019) https://www.news-press.com/story/news/newswire/2019/08/01/florida-power-light-fpl-at-t-battle-over-utility-bills/1887655001/ (last visited Feb. 14, 2022).
[38] Florida Public Service Commission, *What's on a Utility Pole?*, http://www.psc.state.fl.us/ConsumerAssistance/UtilityPole (last visited Feb. 14, 2022). 47 U.S.C. 224(a)(4), defines "pole attachment" as "any attachment by a cable television system or provider or telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility."
[39] S. REP. NO. 95-580, at 13 (1977), as reprinted in 1978 U.S.C.C.A.N. 109, 121.
[40] FCC, *Third Report and Order and Declaratory Ruling In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, FCC-CIRC 1808-03 (2018) at 4-5.
[41] 47 U.S.C. 253(c).
[42] The Pole Attachment Act of 1978 granted utility pole access to cable companies and was designed to promote utility competition and service to the public. Communications Act Amendments of 1978, Pub. L. No. 950234 (Feb. 21, 1978).
[43] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).
[44] The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. 47 U.S.C. 153(50).
[45] Pub. L. No. 104-104, *codified* at 47 U.S.C. 224(f).
[46] 47 U.S.C. 224(a)(1).

services."[47] As of March 19, 2020, 22 states and the District of Columbia have reverse preemption.[48] In 2021, this regulatory authority was transferred to the Florida Public Service Commission;[49] the PSC is still in the process of adopting rules to complete this transfer.[50]

In September 2018, the FCC issued an order which preempted state and local laws and agreements, including those related to pole attachments, to remove regulatory barriers that would inhibit the deployment of "small cell" infrastructure necessary to support new wireless broadband services.[51] The order provided that state or local fees charged to mobile service providers for deploying small cell sites violate federal law unless they:

- Are a reasonable approximation of the state or local government's costs;
- Only factor in costs that are "objectively reasonable;" and
- Are no higher than fees charged to similarly situated competitors.[52]

Florida Promotional Rates for Wireline Attachment

The Legislature has provided for the promotional rate of $1 per wireline attachment per pole, per year for any new attachment necessary to make broadband service available to an unserved or underserved end user within a municipal electric utility service territory. This rate began July 1, 2021 and ends July 1, 2024.[53]

If a municipal electric utility is required to replace a utility pole due to a broadband provider's attachment, the municipal electric utility may require the broadband provider to reimburse all reasonable costs attributable to the new attachment, minus the salvage value of the pole. A utility cannot require pole replacement to accommodate the broadband provider's pole attachment unless it is necessary to comply with applicable engineering and safety standards. Additionally, if the pole replacement is necessary to correct an existing violation, to bring the pole into compliance with changes in applicable standards, or because the pole is at the end of its useful life, the replacement cost may not be passed on to the broadband provider.[54]

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[47] 47 U.S.C. 224(c)(2).
[48] FCC, *Public Notice: States That Have Certified That They Regulate Pole Attachments*, (Mar. 19, 2020) https://www.fcc.gov/document/states-have-certified-they-regulate-pole-attachments-2 (last visited Feb. 14, 2022).
[49] Chapter 2021-191, Laws of Fla.
[50] Cindy Miller, *What's Up with Pole Attachments in Florida: Energy and Telecom Players Urge Different Approaches*, (Sep. 17, 2021) https://energycentral.com/c/um/whats-pole-attachments-florida-energy-and-telecom-players-urge-different (last visited Feb. 14, 2022).
[51] FCC, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Report and Order*, 33 FCC Rcd 9088 (14), FCC-18-133. *See also* CRS, *Overview of Legal Challenges to the FCC's 5G Order on Small Cell Siting* (Feb. 25, 2019). The order's discussion of preemption begins by interpreting the Telecommunication Act's two relevant preemption provisions: ss. 253 and 332(c)(7). Subject to certain exceptions, these sections preempt state and local requirements that "prohibit or have the effect of prohibiting the ability of any entity" to provide "telecommunications" or "personal wireless services."
[52] CRS, *Overview of Legal Challenges to the FCC's 5G Order on Small Cell Siting*, at 2-3. The order also identifies specific fee limits that are presumptively allowed under federal law. For non-recurring fees, such as up-front applications for small cell site installations, localities may charge up to $500, subject to certain exceptions. For recurring fees, such as access fees, localities may charge up to $270 per year. Higher fees may be charged due to local cost variances.
[53] Section 288.9963(3), F.S.
[54] "Useful life" of a utility pole means not less than 30 years for wood utility poles, and not less than 50 years for concrete, steel, ductile iron, and all other utility poles. Section 288.9963(5), F.S.

III. Effect of Proposed Changes:

Broadband Pole Replacement Program (creating s. 288.9964, F.S.)
The bill creates the Broadband Pole Replacement Program within the Office of Broadband. The Office will accept applications for the reimbursement of eligible pole replacement costs and distribute payments until the funds are exhausted. Eligible pole replacement is the removal of an existing utility pole and its replacement with a new utility pole in order to accommodate the attachment to the new utility pole of facilities used by the provider.[55]

Eligibility

Private businesses or nonprofit corporations that currently provide, or will provide, qualifying broadband service to Florida are eligible for reimbursements under the program. These entities must provide, or commit to providing qualifying broadband service that is capable of delivering Internet access at speeds of at least 100 Mbps downstream and 100 Mbps upstream with a latency at a level sufficient to allow real-time, interactive applications. Additionally, the applicants' pole replacements must occur in unserved areas for the purpose of attaching facilities to provide qualifying broadband service to residences or businesses in that area.[56]

Reimbursements

The Office must reimburse an applicant within 60 days after it receives its completed application. Reimbursements are made on a first-come, first-served basis. The Office will reimburse under the program according to availability of funds. Any application that is pending when appropriated funding is exhausted is denied, but the applicant may reapply if funds are later made available. The Office is required to provide updated information on its website regarding the availability of funds and the date when applications may begin to be accepted.

An application for reimbursement must include the following:
- Information sufficient to establish the number and cost of eligible pole replacements;
- Documentation sufficient to establish that the eligible pole replacements are completed;
- The total reimbursement amount requested, and any state or federal grant funding or accounting information required to justify the amount requested;
- A notarized statement from an officer or agent of the applicant which certifies that the application's contents are true and accurate and that the applicant will comply with applicable law as a condition of receiving reimbursement under the program;
- Receipts to verify the amount of eligible pole replacement costs paid by the applicant; and
- Any other information or documentation required by the office to comply with the requirements or conditions, as applicable, of any federal funding used to pay reimbursements under the program.

[55] It does not include removal and replacement of an existing utility pole by the pole owner or an affiliate, unless the removal is performed as an accommodation to a provider of qualifying broadband service.
[56] The bill defines an "unserved area" as a location in which (1) fixed, terrestrial, retail wireline broadband Internet service is unavailable at the time that the broadband service provider requests to attach its facilities to a pole in that location, and no other person has committed to providing qualifying broadband service; or (2) the applicant is committed under the terms of a state or federal grant to provide qualifying broadband service, provided that the availability of the grant is limited to areas that lack access to fixed, terrestrial, retail wireline broadband Internet service.

An eligible pole replacement cost is the actual cost paid by the applicant to perform a pole replacement, excluding any amount that is otherwise reimbursed through another state or federal broadband grant program or other governmental entity. Specifically, the cost may include:

- The removal and disposal of the existing utility pole;
- The purchase and installation of a replacement utility pole: and
- The transfer of any existing facilities to the replacement utility pole.

An eligible applicant shall receive a reimbursement for each eligible utility pole replacement up to 50 percent of the total amount paid for eligible pole replacement costs, or $5,000, whichever is less. Reimbursements from appropriated federal funds must also be made in compliance with any federal requirements or conditions for use of the funds.

If the applicant broadband Internet service provider cannot provide the information required by the application, it may request that the pole owner that performed the pole replacement submit the required information, including the pole replacement costs paid by the applicant.

Additionally, an applicant that is a pole owner that calculates a pole rental and other fees based on a federal or state-approved formula that includes consideration of the pole owner's expenses, must exclude any expenses reimbursed by this program, paid for by a retail provider of qualifying broadband service, or funded by another state or federal grant.

As a condition of receiving reimbursement, the applicant must certify its compliance with the program, including any federal requirements, and agree to refund with interest any reimbursements or portions thereof if the Office finds that the applicant materially violated any requirement of the program.

Administrative Duties

The Office must publish and update the following information on its website:

- Statistics on the number of applications received, processed, and denied by the program;
- Statistics on the value, number, and status of reimbursements provided under the program, including the names of pole owners and retail providers of qualifying broadband service which received reimbursements under the program; and
- The amount of funds remaining from any appropriation.

The bill specifically authorizes the department to adopt rules to establish the application and the conditions or requirements that must be met in order to use and receive any federal funding appropriated to the program.

Reporting by the Office of Broadband

The bill requires the Office to report annually, by January 31, on the activities of the office to meet the requirements of s. 288.9961, F.S., including on any applications made and use of federal funds for broadband infrastructure, deployment, or access. If funds are appropriated to the Broadband Opportunity Program or the Broadband Pole Replacement Program, then the office must report on the programs as well.

Effective Date

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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may ultimately help to provide more affordable broadband Internet service to Florida's communities by increasing related infrastructure. The bill will benefit eligible providers by assisting them to expand their services.

C. Government Sector Impact:

The bill does not appropriate any funds to the Broadband Pole Replacement Program.

It is unclear whether the department will require additional funds or positions to administer the program. SB 2500 provides an additional FTE to the department for the Office of Broadband.

For the bill as originally filed, the Department of Economic Opportunity provided a high estimate for resources necessary to implement the bill, including:

- $880,219 ($35,587 nonrecurring) and 10 FTE;

- $1 million for staff augmentation (8-12 full time and 3-5 part-time staff); and
- $2 million ($1.5 million nonrecurring) for IT software licenses to track projects and awards.

With the changes to the bill, it is likely that this level of resources will not be needed; however any exact impact is unknown at this time. The department may also incur costs for reporting and posting information on its website, which can be done within existing resources.[57]

VI. Technical Deficiencies:

Lines 177-179 should be removed from the bill, as the related provisions were removed from the bill (related to reimbursement of certain administrative expenses).

VII. Related Issues:

The Department of Economic Opportunity, in its agency analysis of the bill, states that the U.S. Treasury had advised the department "against the use of Capital Projects Fund for utility pole replacement or general construction projects."[58]

SB 1802 is a linked bill that creates the Broadband Pole Replacement Trust Fund.

VIII. Statutes Affected:

This bill substantially amends section 288.9961 of the Florida Statutes.

This bill creates section 288.9964 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on February 28, 2022:
The committee substitute:

- Requires the Office of Broadband to report annually on its activities, including on the Broadband Pole Replacement Program and the Broadband Opportunity Program;
- Removes references to the Broadband Pole Replacement Trust Fund and related provisions;
- Removes the appropriation to the Broadband Opportunity Program;
- Allows for reimbursement of pole replacement costs made after July 1, 2022;
- Provides for reimbursement on a first-come, first-served basis;
- Requires the Office of Broadband to publish an application form by September 1, 2022;

[57] Department of Economic Opportunity, *2022 Agency Legislative Bill Analysis SB 1800*, February 21, 2022 (on file with the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development).
[58] *Id*.

- Clarifies the documentation necessary for the application;
- Removes the authorization for reimbursement of administrative costs to submit the application;
- Requires any reimbursements made with funds appropriated from federal funds to also meet federal grant requirements;
- Clarifies the rulemaking authority; and
- Changes the effective date to July 1, 2022.

CS by Commerce and Tourism on January 24, 2022:
Inserts the bill number assigned to linked bill, CS/SB 1802, which creates the Broadband Pole Replacement Program, in the contingent effective date.

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 Commerce and Tourism; and Senator Boyd

577-02253-22 20221800c1

A bill to be entitled

An act relating to broadband infrastructure; amending s. 288.9961, F.S.; revising the duties of the Florida Office of Broadband to include administering the Broadband Pole Replacement Program; creating s. 288.9964, F.S.; providing legislative findings; defining terms; establishing the Broadband Pole Replacement Program within the office; providing responsibilities of the office; providing eligibility requirements for reimbursement under the program; providing that reimbursements are subject to the availability of certain funds; providing that certain denied applicants may reapply in certain circumstances; providing requirements for the program application; requiring the office to provide certain reimbursements within a certain period of time; authorizing an applicant to request certain information from a pole owner under certain circumstances; requiring an applicant to meet certain conditions; requiring the Secretary of Economic Opportunity to apply for certain federal funding for the program; requiring that the amount of state funds allocated to the program be reduced by the amount of certain federal funds provided to the program; requiring the office to publish and continually update certain information on its public website; requiring an audit of the Broadband Pole Replacement Trust Fund within a certain period of time; requiring the office to provide a report containing specified information

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to the Governor and the Legislature within a specified timeframe; providing that certain provisions do not require or authorize rulemaking; providing an appropriation; providing a contingent effective date.

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

Section 1. Paragraph (g) is added to subsection (4) of section 288.9961, Florida Statutes, to read:

288.9961 Promotion of broadband adoption; Florida Office of Broadband.—

(4) FLORIDA OFFICE OF BROADBAND.—The Florida Office of Broadband is created within the Division of Community Development in the department for the purpose of developing, marketing, and promoting broadband Internet services in this state. The office, in the performance of its duties, shall do all of the following:

(g) Administer the Broadband Pole Replacement Program established in s. 288.9964.

Section 2. Section 288.9964, Florida Statutes, is created to read:

288.9964 Broadband Pole Replacement Program.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that a broadband pole replacement program administered by the Florida Office of Broadband is necessary to further the state's goal of expanding and accelerating access to broadband service in unserved areas throughout this state.

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

(a) "Applicant" means a private business, including a

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corporation, a limited liability company, a partnership, a nonprofit corporation, or any other private business entity that provides or will provide qualifying broadband service in this state.

(b) "Application" means an application made under this section for an eligible pole replacement reimbursement.

(c) "Broadband Internet service" means a service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 25 megabits per second downstream and 3 megabits per second upstream.

(d) "Broadband Pole Replacement Trust Fund" means the trust fund established pursuant to s. 288.9965.

(e) "Eligible pole replacement" means the removal of an existing utility pole and its replacement with a new utility pole in an unserved area in order to accommodate the attachment to such new utility pole of facilities used in whole or in part by a retail provider of qualifying broadband service for the purpose of providing qualifying broadband service access to residences or businesses in that unserved area. The term does not include the removal and replacement of an existing utility pole by the owner or an affiliated company unless the removal or replacement is performed as an accommodation to a provider of qualifying broadband services.

(f) "Eligible pole replacement costs" means the actual costs to perform an eligible pole replacement which are paid by an applicant, excluding any amount separately reimbursed through another state or federal broadband grant program or by some other governmental entity. The term includes the costs to remove and dispose of the existing utility pole, to purchase and

install a replacement utility pole, and to transfer any existing facilities to the replacement utility pole.

(g) "Office" means the Florida Office of Broadband.

(h) "Pole" means any pole used in whole or in part for wire communications or electric distribution.

(i) "Pole owner" means any electric utility as defined in s. 366.02(2), public utility as defined in s. 366.02(1), communications services provider as defined in s. 366.02(5), cable television operator, or local exchange carrier that owns or controls a pole.

(j) "Program" means the Broadband Pole Replacement Program established under this section.

(k) "Qualifying broadband service" means a fixed, terrestrial, retail wireline broadband Internet service capable of delivering Internet access at speeds of at least 100 megabits per second both downstream and upstream with latency at a level sufficient to allow real-time, interactive applications.

(l) "Reimbursed through another state or federal broadband grant program" means, with respect to eligible pole replacement costs, that an applicant paying such costs has received or is entitled to receive reimbursement for such costs under the terms of another state or federal broadband grant program for the deployment of broadband facilities, whether through a specific reimbursement for such costs or through support payments that equal or exceed the person's actual deployment costs, including eligible pole replacement costs. The term does not include the receipt of a state or federal grant that covers only a portion of the applicant's actual deployment costs, including eligible pole replacement costs, if the applicant pays the eligible pole

replacement costs with its own funds.

(m) "Unserved area" means a location in which:

1. At the time of a request by a retail provider of qualifying broadband service to attach facilities to a pole in such location, fixed, terrestrial, retail wireline broadband Internet service is unavailable, according to the latest available broadband deployment data from the Federal Communications Commission, provided that no person other than the applicant has committed to providing qualifying broadband service in such area; or

2. An applicant is committed under the terms of a federal or state grant to provide qualifying broadband service, provided that the availability of such grant is limited to areas lacking access to fixed, terrestrial, retail wireline broadband Internet service.

(3) BROADBAND POLE REPLACEMENT PROGRAM.—

(a) The Broadband Pole Replacement Program is established within the Florida Office of Broadband. The office shall administer the program and is responsible for receiving and reviewing applications and distributing reimbursements under the program.

(b) Any applicant that pays eligible pole replacement costs is eligible for reimbursement of such costs under the program and may submit an application for reimbursement in accordance with this section.

(c) Reimbursements provided under the program are subject to the availability of funds in the Broadband Pole Replacement Trust Fund. The office shall accept applications for reimbursement until all funds in the Broadband Pole Replacement

Trust Fund are exhausted.

(d) An application pending when all funds in the Broadband Pole Replacement Trust Fund are exhausted is deemed denied; however, the applicant may reapply if sufficient funds are later made available in the trust fund.

(e) Within 60 days after the first deposit of funds into the Broadband Pole Replacement Trust Fund, the office shall publish an application form for reimbursement of eligible pole replacement costs under the program. The application must require the following:

1. Information sufficient to establish the number and cost of eligible pole replacements that qualify for reimbursement under the program.

2. Documentation sufficient to establish that the claimed eligible pole replacements have been completed.

3. The total reimbursement amount requested and any state or federal grant funding or accounting information required to justify the amount requested.

4. A notarized statement from an officer or agent of the applicant certifying that the contents of the application are true and accurate and that such applicant will comply with the requirements of this section as a condition of receiving reimbursement under the program.

5. Receipts verifying the amount of eligible pole replacement costs paid by the applicant.

(f) Within 60 days after receipt of a complete application that establishes an applicant's eligible pole replacement costs, the office shall reimburse the applicant in an amount equal to:

1. Up to 50 percent of the total amount paid or $5,000,

whichever is less, by such applicant for eligible pole replacement costs; and

2. Up to 100 percent of the documented actual and reasonable administrative expenses paid by such applicant in preparing and submitting the application, including any administrative expenses charged by a pole owner pursuant to paragraph (g). The amount reimbursed under this subparagraph may not exceed 5 percent of eligible pole replacement costs set forth in the application.

(g) If such information is not otherwise reasonably available, an applicant may request that a pole owner performing an eligible pole replacement provide the number and costs of the pole replacements and receipts verifying the amount of eligible pole replacement costs paid by the applicant. A pole owner providing such information and documentation may require reimbursement from the applicant of its administrative expenses, which may not exceed 5 percent of the eligible pole replacement costs.

(h) As a condition of receiving reimbursement under the program, an applicant must:

1. Certify its compliance with the requirements of this section; and

2. Agree to refund with interest at the applicable Federal Funds rate as specified by s. 670.506 any reimbursements or portions thereof received under the program to the Broadband Pole Replacement Trust Fund or the General Revenue Fund, at the direction of the office, if the office finds, upon substantial evidence and after providing such applicant with notice and an opportunity to respond, that such applicant materially violated

a requirement of this section with respect to such reimbursements or portions thereof.

(i) If applicable, an applicant that is a pole owner that calculates its pole rental and other fees on the basis of a formula required or approved by federal or state law or regulation which includes consideration of the pole owner's expenses, must, as a condition of receiving reimbursement under the program, exclude from such expenses any eligible pole replacement costs that were reimbursed by the program, paid for by a retail provider of qualifying broadband service, or funded by another state or federal grant.

(4) PROGRAM FUNDING.—

(a) The Secretary of Economic Opportunity shall apply for $100 million in federal funding for the program, including funds available under the Coronavirus Capital Projects Fund, pursuant to the authorization set forth in s. 9901 of the American Rescue Plan Act of 2021 and codified at s. 604, Title VI of the Social Security Act, 42 U.S.C. s. 801, et seq. Any such funds received must be deposited into the Broadband Pole Replacement Trust Fund.

(b) The amount of state funds allocated to the program must be reduced by the amount of federal funds provided to the program from the Coronavirus Capital Projects Fund.

(5) TRANSPARENCY.—Within 60 days after the initial deposit of funds into the Broadband Pole Replacement Trust Fund, the office shall publish, and thereafter continually update, the following information on its public website:

(a) Statistics on the number of applications received, processed, and rejected under the program.

(b) Statistics on the value, number, and status of reimbursements provided under the program, including the names of pole owners and retail providers of qualifying broadband service which received reimbursements under the program.

(c) The amount of funds remaining in the Broadband Pole Replacement Trust Fund.

(6) AUDIT.—Within 1 year after the initial deposit of funds into the Broadband Pole Replacement Trust Fund, the Auditor General shall audit the fund and its administration for compliance with the requirements of this section and s. 288.9965.

(7) REPORT.—Within 1 year after all funds in the Broadband Pole Replacement Trust Fund are exhausted, the office shall provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which identifies and examines the deployment of broadband infrastructure and technology facilitated by reimbursements provided under the program.

(8) RULEMAKING.—Rulemaking by the department, the office, or any other agency is not required to administer and is not authorized by this section.

Section 3. For the 2022-2023 fiscal year, the sum of $400 million in nonrecurring funds is appropriated from the General Revenue Fund, from payments received by the state pursuant to the Federal Coronavirus State Fiscal Recovery Fund established in 42 U.S.C. s. 802, to the Florida Office of Broadband within the Department of Economic Opportunity for the purpose of administering the Broadband Opportunity Program established in s. 288.9962, Florida Statutes.

Section 4. This act shall take effect upon becoming a law, if SB 1802 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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 22, 2022

Senator Kelli Stargel
404 South Monroe Street
201 The Capitol
Tallahassee, FL 32399

Dear Madam Chair Stargel:

I respectfully request the following bills be added to the agenda for the Committee on Appropriations, at your earliest convenience.

CS/CS/SB 1800: Broadband Infrastructure (PCS)
CS/CS/SB 1802: Broadband Pole Replacement Trust Fund (PCS)
CS/CS/SB 1874: Department of Financial Services (PCS)

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: Tim Sadberry
Alicia Weiss

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 Appropriations

BILL:	PCS/CS/SB 1802 (224394)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Commerce and Tourism Committee; and Senator Boyd
SUBJECT:	Broadband Pole Replacement Trust Fund
DATE:	February 24, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Fav/CS**
2.	Hrdlicka	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	Hrdlicka	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1802 creates the Broadband Pole Replacement Trust Fund within the Department of Economic Opportunity to provide reimbursements to qualified applicants from the Broadband Pole Replacement Program, created by linked bill, SB 1800, and for use by the Office of Broadband to administer the program.

The bill is linked to SB 1800, which creates the Broadband Pole Replacement Program within the department's Office of Broadband.

This bill takes effect on the same date that SB 1800 takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law. SB 1800 takes effect upon becoming a law. SB 1800 takes effect July 1, 2022.

II. Present Situation:

Article III, s. 19(f), of the Florida Constitution requires that state trust funds may only be created by the Legislature if passed by a three-fifths vote of the membership of each house of the Legislature in a separate bill for the sole purpose of creating a trust fund. Each trust fund must be created by general law that specifies at a minimum all of the following:

- The name of the trust fund;

- The agency or branch of state government responsible for administering the trust fund;
- The requirements or purposes the trust fund is established to meet;
- The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.[1]

State trust funds terminate no more than four years after the effective date of the act authorizing the initial creation of the trust fund.[2] The Legislature is required to review all state trust funds at least once every four years.[3] If the Legislature does not re-create a trust fund, it will be abolished four years after its initial creation pursuant to the Florida Constitution.[4]

U.S. Department of the Treasury Coronavirus Capital Projects Fund

The American Rescue Plan Act allocated $10 billion to eligible governments to carry out capital projects to meet critical needs, with an emphasis on broadband infrastructure.[5] Florida's share is $366 million, and, in December 2021, the state submitted its intent to use the funds to expand broadband Internet infrastructure in Florida, among other capital uses.[6]

Presumptively eligible projects under the program include the construction and deployment of broadband infrastructure that is designed to deliver service that reliably meets or exceeds symmetrical speeds of 100 Mbps, or if impracticable, speeds of 100 Mbps downstream and 20 Mbps upstream; projects for digital connectivity that facilitate broadband access; and construction or improvement of certain community facilities.[7] Projects may also be eligible on a case-by-case review, such as investments in capital assets, such as buildings, towers, digital devices and equipment, fiber-optic lines, and broadband networks.[8] Each capital project must:

- Invest in capital assets designed to directly enable work, education, and health monitoring;
- Be designed to address a critical need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency; and
- Be designed to address a critical need of the community to be served by it.

The deadline to submit a grant plan to the U.S. Department of the Treasury is September 24, 2022.

SB 1800

CS/SB 1800 creates the Broadband Pole Replacement Program, to be administered by the Office of Broadband (Office) within the Department of Economic Opportunity (department). The

[1] Section 215.3207, F.S.
[2] FLA. CONST. art III, s. 19.
[3] Section 215.3208, F.S.
[4] FLA. CONST. art III, s. 19.
[5] U.S. Dep't. of Treasury, *Capital Projects Fund*, https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund (last visited Feb. 14, 2022).
[6] *See* Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development, Committee Meeting of January 12, 2022, meeting packet and video at https://www.flsenate.gov/Committees/Show/ATD/ (last visited Feb. 17, 2022).
[7] U.S. Dep't. of Treasury, *Guidance for the Coronavirus Capital Projects Fund for States, Territories, and Freely Associated States*, at 3, https://home.treasury.gov/system/files/136/Capital-Projects-Fund-Guidance-States-Territories-and-Freely-Associated-States.pdf (last visited Feb. 17, 2022).
[8] *Id*. at 7.

program will reimburse eligible broadband Internet service providers for their costs incurred for the removal and replacement of existing utility poles in areas of Florida that are unserved by broadband Internet service.

Reimbursements under the program are limited to 50 percent of the broadband Internet service provider's eligible pole replacement cost or $5,000, whichever is less, in addition to the provider's administrative costs related to the preparation and submission of the application for reimbursement.

The bill directs the Secretary of the department to apply for $100 million in federal funding from the Coronavirus Capital Projects Fund and directs any such funds received to be placed into the Broadband Pole Replacement Trust Fund. The bill does not appropriate funds for the program.

III. Effect of Proposed Changes:

Section 1 creates s. 288.9965, F.S., the Broadband Pole Replacement Trust Fund within the Department of Economic Opportunity to provide reimbursements to qualified applicants from the Broadband Pole Replacement Program, created by linked bill, SB 1800, and for use by the Office of Broadband to administer the program.

The trust fund consists of funds appropriated by the Legislature; funds transferred by the department; interest earnings; and grants, gifts, and other contributions made directly to the trust fund. Funds appropriated from federal grant funds must be used consistent with federal law and with any federal grant agreement between the Department of Economic Opportunity and the federal agency for use of the funds.

The bill further provides that any balance that is in the trust fund at the end of any fiscal year shall be carried forward in the trust fund for the purposes of continued administration of the Broadband Pole Replacement Program.

Pursuant to the requirements of the Florida Constitution, the trust fund will terminate 4 years after its effective date, but must first be reviewed a provided in s. 215.3206(1) and (2), F.S.

Section 2 directs the Division of Law Revision to replace the phrase "4 years after the effective date of this act" with the date that the trust fund will terminate.

Section 3 states that the act takes effect on the same date that SB 1800, relating to the Broadband Pole Replacement Program, takes effect if such legislation is adopted in the same legislative session or an extension thereof and becomes a law. SB 1800 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:

Article III, s. 19(f), of the Florida Constitution requires that every trust fund be created by a three-fifths vote of the membership of each house of the Legislature in a separate bill for the sole purpose of creating a trust fund. State trust funds terminate no more than 4 years after the initial creation, unless they are re-created. The Broadband Pole Replacement Trust Fund terminates 4 years after the date it becomes effective.

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 creates section 288.9965 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.)

PCS (224394) by Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development:
The committee substitute removes the reference to the deposit of federal Capital Project Fund funds. The CS also clarifies that funds appropriated from federal grant funds must be used consistent with federal law and with any federal grant agreement between the Department of Economic Opportunity and the federal agency for use of the funds.

CS by Commerce and Tourism on January 24, 2022:
Inserts the bill number assigned to linked bill, CS/SB 1800, which creates the Broadband Pole Replacement Trust Fund, in the contingent effective date.

B. Amendments:

None.

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

224394

576-03266-22

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Transportation, Tourism, and Economic Development)

A bill to be entitled

An act relating to the Broadband Pole Replacement Trust Fund; creating s. 288.9965, F.S.; creating the trust fund within the Department of Economic Opportunity; providing the purpose of the trust fund; providing that moneys credited to the trust fund shall consist of certain funds; requiring that certain funds in the trust fund be used in a manner consistent with federal law or grant agreement for use of the funds; providing that the balance in the trust fund at the end of a fiscal year remains in the trust fund and is available for carrying out the purposes of the trust fund; providing for future legislative review and termination or re-creation of the trust fund; providing a directive to the Division of Law Revision; providing a contingent effective date.

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

Section 1. Section 288.9965, Florida Statutes, is created to read:

288.9965 Broadband Pole Replacement Trust Fund.—

(1) The Broadband Pole Replacement Trust Fund is created within the Department of Economic Opportunity for the purpose of providing reimbursements to qualified applicants under the Broadband Pole Replacement Program pursuant to s. 288.9964 and

224394

576-03266-22

for use by the Florida Office of Broadband in the administration of that program. Moneys credited to the trust fund shall consist of funds appropriated by the Legislature; funds transferred by the department; interest earnings; and grants, gifts, and other contributions made directly to the trust fund. Any funds in the trust fund appropriated from federal funds must be used in a manner consistent with federal conditions or regulations, as applicable, and with any grant agreement entered into by the department with the federal agency for use of the funds.

(2) Notwithstanding s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of the year and shall be available for carrying out the purposes of the trust fund.

(3) In accordance with s. 19(f)(2), Art. III of the State Constitution, unless terminated sooner, the Broadband Pole Replacement Trust Fund shall be terminated 4 years after the effective date of this act. Before its scheduled termination, the trust fund shall be reviewed as provided in s. 215.3206(1) and (2).

Section 2. The Division of Law Revision is directed to replace the phrase "4 years after the effective date of this act" where it occurs in this act with the date the trust fund will terminate.

Section 3. This act shall take effect on the same date that SB 1800 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1802
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Commerce and Tourism Committee; and Senator Boyd
SUBJECT:	Broadband Pole Replacement Trust Fund
DATE:	March 2, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Fav/CS**
2.	Hrdlicka	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	Hrdlicka	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1802 creates the Broadband Pole Replacement Trust Fund within the Department of Economic Opportunity to provide reimbursements to qualified applicants from the Broadband Pole Replacement Program, created by linked bill, SB 1800, and for use by the Office of Broadband to administer the program.

The bill is linked to SB 1800, which creates the Broadband Pole Replacement Program within the department's Office of Broadband.

This bill takes effect on the same date that SB 1800 takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law. SB 1800 takes effect upon becoming a law. SB 1800 takes effect July 1, 2022.

II. Present Situation:

Article III, s. 19(f), of the Florida Constitution requires that state trust funds may only be created by the Legislature if passed by a three-fifths vote of the membership of each house of the Legislature in a separate bill for the sole purpose of creating a trust fund. Each trust fund must be created by general law that specifies at a minimum all of the following:

- The name of the trust fund;

- The agency or branch of state government responsible for administering the trust fund;
- The requirements or purposes the trust fund is established to meet;
- The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.[1]

State trust funds terminate no more than four years after the effective date of the act authorizing the initial creation of the trust fund.[2] The Legislature is required to review all state trust funds at least once every four years.[3] If the Legislature does not re-create a trust fund, it will be abolished four years after its initial creation pursuant to the Florida Constitution.[4]

U.S. Department of the Treasury Coronavirus Capital Projects Fund

The American Rescue Plan Act allocated $10 billion to eligible governments to carry out capital projects to meet critical needs, with an emphasis on broadband infrastructure.[5] Florida's share is $366 million, and, in December 2021, the state submitted its intent to use the funds to expand broadband Internet infrastructure in Florida, among other capital uses.[6]

Presumptively eligible projects under the program include the construction and deployment of broadband infrastructure that is designed to deliver service that reliably meets or exceeds symmetrical speeds of 100 Mbps, or if impracticable, speeds of 100 Mbps downstream and 20 Mbps upstream; projects for digital connectivity that facilitate broadband access; and construction or improvement of certain community facilities.[7] Projects may also be eligible on a case-by-case review, such as investments in capital assets, such as buildings, towers, digital devices and equipment, fiber-optic lines, and broadband networks.[8] Each capital project must:

- Invest in capital assets designed to directly enable work, education, and health monitoring;
- Be designed to address a critical need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency; and
- Be designed to address a critical need of the community to be served by it.

The deadline to submit a grant plan to the U.S. Department of the Treasury is September 24, 2022.

SB 1800

CS/SB 1800 creates the Broadband Pole Replacement Program, to be administered by the Office of Broadband (Office) within the Department of Economic Opportunity (department). The

[1] Section 215.3207, F.S.
[2] FLA. CONST. art III, s. 19.
[3] Section 215.3208, F.S.
[4] FLA. CONST. art III, s. 19.
[5] U.S. Dep't. of Treasury, *Capital Projects Fund*, https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund (last visited Feb. 14, 2022).
[6] *See* Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development, Committee Meeting of January 12, 2022, meeting packet and video at https://www.flsenate.gov/Committees/Show/ATD/ (last visited Feb. 17, 2022).
[7] U.S. Dep't. of Treasury, *Guidance for the Coronavirus Capital Projects Fund for States, Territories, and Freely Associated States*, at 3, https://home.treasury.gov/system/files/136/Capital-Projects-Fund-Guidance-States-Territories-and-Freely-Associated-States.pdf (last visited Feb. 17, 2022).
[8] *Id*. at 7.

program will reimburse eligible broadband Internet service providers for their costs incurred for the removal and replacement of existing utility poles in areas of Florida that are unserved by broadband Internet service.

Reimbursements under the program are limited to 50 percent of the broadband Internet service provider's eligible pole replacement cost or $5,000, whichever is less, in addition to the provider's administrative costs related to the preparation and submission of the application for reimbursement.

The bill directs the Secretary of the department to apply for $100 million in federal funding from the Coronavirus Capital Projects Fund and directs any such funds received to be placed into the Broadband Pole Replacement Trust Fund. The bill does not appropriate funds for the program.

III. Effect of Proposed Changes:

Section 1 creates s. 288.9965, F.S., the Broadband Pole Replacement Trust Fund within the Department of Economic Opportunity to provide reimbursements to qualified applicants from the Broadband Pole Replacement Program, created by linked bill, SB 1800, and for use by the Office of Broadband to administer the program.

The trust fund consists of funds appropriated by the Legislature; funds transferred by the department; interest earnings; and grants, gifts, and other contributions made directly to the trust fund. Funds appropriated from federal grant funds must be used consistent with federal law and with any federal grant agreement between the Department of Economic Opportunity and the federal agency for use of the funds.

The bill further provides that any balance that is in the trust fund at the end of any fiscal year shall be carried forward in the trust fund for the purposes of continued administration of the Broadband Pole Replacement Program.

Pursuant to the requirements of the Florida Constitution, the trust fund will terminate 4 years after its effective date, but must first be reviewed a provided in s. 215.3206(1) and (2), F.S.

Section 2 directs the Division of Law Revision to replace the phrase "4 years after the effective date of this act" with the date that the trust fund will terminate.

Section 3 states that the act takes effect on the same date that SB 1800, relating to the Broadband Pole Replacement Program, takes effect if such legislation is adopted in the same legislative session or an extension thereof and becomes a law. SB 1800 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:

Article III, s. 19(f), of the Florida Constitution requires that every trust fund be created by a three-fifths vote of the membership of each house of the Legislature in a separate bill for the sole purpose of creating a trust fund. State trust funds terminate no more than 4 years after the initial creation, unless they are re-created. The Broadband Pole Replacement Trust Fund terminates 4 years after the date it becomes effective.

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 creates section 288.9965 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 Appropriations on February 28, 2022:
The committee substitute removes the reference to the deposit of federal Capital Project Fund funds. The CS also clarifies that funds appropriated from federal grant funds must be used consistent with federal law and with any federal grant agreement between the Department of Economic Opportunity and the federal agency for use of the funds.

CS by Commerce and Tourism on January 24, 2022:
Inserts the bill number assigned to linked bill, CS/SB 1800, which creates the Broadband Pole Replacement Trust Fund, in the contingent effective date.

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 Commerce and Tourism; and Senator Boyd

577-02254-22 20221802c1

A bill to be entitled

An act relating to the Broadband Pole Replacement Trust Fund; creating s. 288.9965, F.S.; creating the trust fund within the Department of Economic Opportunity; providing the purpose of the trust fund; providing that moneys credited to the trust fund shall consist of certain funds; requiring that funds in the trust fund be used in a manner consistent with federal law; providing that the balance in the trust fund at the end of a fiscal year remains in the trust fund and is available for carrying out the purposes of the trust fund; providing for future legislative review and termination or re-creation of the trust fund; providing a directive to the Division of Law Revision; providing a contingent effective date.

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

Section 1. Section 288.9965, Florida Statutes, is created to read:

288.9965 Broadband Pole Replacement Trust Fund.—

(1) The Broadband Pole Replacement Trust Fund is created within the Department of Economic Opportunity for the purpose of providing reimbursements to qualified applicants under the Broadband Pole Replacement Program pursuant to s. 288.9964 and for use by the Florida Office of Broadband in the administration of that program. Moneys credited to the trust fund shall consist of funds appropriated by the Legislature; federal funds received from the Coronavirus Capital Projects Fund for the Broadband

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

577-02254-22 20221802c1

Pole Replacement Program; funds transferred by the department; interest earnings; and grants, gifts, and other contributions made directly to the trust fund. Funds in the trust fund must be used in a manner consistent with federal law.

(2) Notwithstanding s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of the year and shall be available for carrying out the purposes of the trust fund.

(3) In accordance with s. 19(f)(2), Art. III of the State Constitution, unless terminated sooner, the Broadband Pole Replacement Trust Fund shall be terminated 4 years after the effective date of this act. Before its scheduled termination, the trust fund shall be reviewed as provided in s. 215.3206(1) and (2).

Section 2. The Division of Law Revision is directed to replace the phrase "4 years after the effective date of this act" where it occurs in this act with the date the trust fund will terminate.

Section 3. This act shall take effect on the same date that SB 1800 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

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 22, 2022

Senator Kelli Stargel
404 South Monroe Street
201 The Capitol
Tallahassee, FL 32399

Dear Madam Chair Stargel:

I respectfully request the following bills be added to the agenda for the Committee on Appropriations, at your earliest convenience.

CS/CS/SB 1800: Broadband Infrastructure (PCS)
CS/CS/SB 1802: Broadband Pole Replacement Trust Fund (PCS)
CS/CS/SB 1874: Department of Financial Services (PCS)

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: Tim Sadberry
Alicia Weiss

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 Appropriations

BILL:	PCS/CS/SB 1952 (705416)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Governmental Oversight and Accountability Committee; and Senator Albritton
SUBJECT:	Evidence of Vendor Financial Stability
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Limones-Borja	McVaney	GO	**Fav/CS**
2.	Davis	Betta	AEG	**Recommend: Fav/CS**
3.	Davis	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1952 permits an agency to establish financial stability criteria when determining whether a vendor is responsible and to require a vendor to demonstrate its financial stability during the competitive solicitation process. The bill specifies three forms of evidence an agency must accept if it requires a vendor to show financial stability during the competitive solicitation process for the procurement of commodities and contractual services. Such evidence includes:

- Audited financial statements that demonstrate the vendor's satisfaction of financial stability criteria.
- Documentation of an investment-grade rating from a credit rating agency designated as a nationally recognized statistical rating organization by the Securities and Exchange Commission.
- For a vendor with annual revenues exceeding $10 million, a letter issued by the chief financial officer or controller verifying such vendor's satisfaction of financial stability criteria.
- For a vendor that previously provided substantially similar services, unaudited financial statements demonstrating such vendor's previous performance of substantially similar services.

The bill defines the term "financial stability" to mean the capacity to, at a minimum, efficiently allocate resources, assess and manage financial risks, and fully perform the contract requirements, for the term of the contract.

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

The bill takes effect July 1, 2022.

II. Present Situation:

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency procurement of personal property and services. The term "agency" is defined broadly to mean any unit of the executive branch of state government.[1] The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and contractual services, as well as commodities needed to support agency activities.[2]

The DMS is authorized to evaluate contracts let by the federal government, another state, or a political subdivision for the provision of commodities and contract services and, when it is determined to be cost effective and in the best interest of the state, to enter into written agreements authorizing a state agency to make purchases under such contract.[3] The DMS negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.

Section 287.017, F.S., establishes the purchasing categories, which are threshold amounts linked to other requirements in ch. 287, F.S., as follows:

- Category One: $20,000;
- Category Two: $35,000;
- Category Three: $65,000;
- Category Four: $195,000; and
- Category Five: $325,000.

State Term Contracts & Request for Quotes

Section 287.056, F.S., requires agencies and permits eligible users[4] to purchase commodities and contractual services from purchasing agreements and state term contracts[5] procured by the DMS.

[1] Section 287.012(1), F.S., defines the term "agency" to mean any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.
[2] *See* ss. 287.032 and 287.042, F.S.
[3] Section 287.042(16), F.S.
[4] Section 287.012(11), F.S., defines "eligible user" to mean any person or entity authorized by the DMS pursuant to rule to purchase from state term contracts or to use the online procurement system.
[5] Section 287.012(28), F.S., defines "state term contract" to mean a term contract that is competitively procured by the DMS pursuant to s. 287.057, F.S., and that is used by agencies and eligible users pursuant to s. 287.056, F.S.

Agencies and eligible users may use a request for quote, to obtain written pricing or services information from a state term contract vendor to determine whether a more favorable price, term, or condition than that provided in the state term contract is available.[6] The use of a request for quote does not constitute a decision subject to protest.[7] Rule 60A-1.043, Florida Administrative Code, requires agencies to request at least two quotes from state term contracts with multiple vendors, unless (i) the purchase is less than Category One ($20,000), or (ii) the state term contract requires otherwise. Agencies must document the justification for a selection based on receipt of less than two quotes.[8]

Competitive Solicitation

With certain exceptions,[9] the procurement of commodities or contractual services in excess of Category Two, $35,000, requires agencies to use a competitive solicitation process.[10] Any form of competitive solicitation must be made available simultaneously to all vendors, must include the time and date for the receipt of bids, proposals, or replies, and must include all contractual terms and conditions applicable to the procurement.[11] Depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors, agencies may use a variety of methods, including:

- Single source contracts,[12] used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid (ITB),[13] used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results. The agency specifically defines the scope of work for the contractual service and establishes precise specifications for the commodity or group of commodities;
- Requests for proposals (RFP),[14] which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate (ITN),[15] which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services, by an agency dealing with a limited number of vendors. Agencies must specify the criteria in determining the acceptability and selection of the vendors in which the agency will invite to negotiate.

Chapter 287, F.S., grants an agency discretion in setting criteria for the award of a contract via competitive solicitation. For example, s. 287.057(1)(b)4., F.S., which governs the award of a

[6] Section 287.056(2), F.S.
[7] Section 287.056(2), F.S.
[8] Rule 60A-1.043, F.A.C.
[9] Section 287.057(3)(e), F.S.
[10] Section 287.057(1), F.S.
[11] *Id.*
[12] Section 287.057(3)(c), F.S.
[13] Section 287.057(1)(a), F.S.
[14] Section 287.057(1)(b), F.S.
[15] Section 287.057(1)(c), F.S.

contract via a RFP, provides that the "contract shall be awarded in writing to the *responsible*[16] *and responsive*[17] vendor whose proposal is determined … to be the most advantageous to the state, taking into consideration the price and other criteria set forth in the request for proposals." Similarly, for an ITN, s. 287.057(1)(c)4., F.S., provides that the "agency shall award the contract to the responsible and responsive vendor that the agency determines will provide the best value to the state." Additional criteria or information requested for determining whether such vendor is responsible include:

- References of the vendor;
- Documents evidencing a vendor's technical expertise; and
- A showing of financial capacity (also referred to as financial ability,[18] financial viability,[19] or financial stability[20]) by submitting financial data, including audited financial statements.

Contract Evaluations and Negotiations

For a contract in excess of $195,000, the agency head must appoint at least three people to evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for which commodities or contractual services are sought.[21] In addition, the agency head must appoint three people[22] to conduct negotiations during an invitation to negotiate procurement who collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for which commodities or contractual services are sought.[23]

If the value of a contract is in excess of $1 million in any fiscal year, at least one of the persons conducting negotiations must be certified as a Florida certified contract negotiator (FCCN)[24] in

[16] Section 287.012(25), F.S., defines "responsible vendor" to mean a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance. This definition includes the financial capacity of the vendor.
[17] Section 287.012(27), F.S., defines "responsive vendor" to mean a vendor that has submitted a bid, proposal, or reply that conforms in all material respected to the solicitation.
[18] See, for example, *The Escambia County School District Request for Proposal #161301*, p. 18, file:///C:/Users/borja.gabriela/Downloads/Bid_161301.pdf.
[19] See, for example, *Department of Juvenile Justice Solicitation #10706 – Statewide Clinical Laboratory Testing Services*, p. 23, file:///C:/Users/borja.gabriela/Downloads/F1236158504_RFP_10706_SolicitationDocument.pdf.
[20] Rule 25-17.0832, F.A.C.
[21] Section 287.057(17)(a)1., F.S.
[22] Section 287.057(17)(b)2, F.S., provides that if the value of the contract is in excess of $1 million in any fiscal year, then at least one person conducting negotiations must be certified as a contract negotiator. If the value of the contract is in excess of $10 million in any fiscal year, then at least one person conducting negotiations must be a Project Management Professional certified by the Project Management Institute.
[23] Section 287.057(17)(a)2., F.S.
[24] Rule 60A-1.041(3), F.A.C., provides that a person must meet the following requirements for FCCN Certification, which is valid for five years or until the expiration date stated on the person's FCCN certificate, whichever is later:

- Successful completion of the FCCN certification course;
- At least 12 months' experience as a purchasing agent, contract manager, or contract administrator for an agency or local government entity, where the job description for the position required that at least half of the employee's designated duties included procuring commodities or contractual services, participating in contract negotiation, contract management, or contract administration, or working as an agency attorney whose duties included providing legal counsel to the agency's purchasing or contracting staff; and
- Experience during the preceding five years in leading at least one federal, state, or local government negotiation team through a negotiated procurement, or participation in at least two federal, state, or local government negotiated procurements. Negotiated procurements include those from a single source; those negotiated when fewer than two

order to ensure that certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing those strategies, and involved appropriately in the procurement process.[25] If the value of a contract is in excess of $10 million in any fiscal year, at least one of the persons conducting negotiations must be a Project Management Professional certified by the Project Management Institute.[26]

Vendor Registration and the Vendor Bid System

Any vendor that wishes to provide goods or services to the state must register in the Vendor Registration System.[27] Once registered, vendors are able to do business with the State of Florida executive branch agencies through the Vendor Information Portal.[28]

The Vendor Bid System (VBS), allows for agencies to post competitive solicitations of $35,000 or more. These solicitations include ITBs, RFPs, and ITNs for all vendors to review. Vendors can then bid, submit proposals, or submit a request to negotiate with the state agency through the VBS. A vendor will be notified through the VBS if its bid has been chosen and proceed by following bid specifications, timelines, and budgets.[29]

Chief Financial Officer and Department of Financial Services

The chief financial officer (CFO) of Florida is responsible for settling and approving accounts against the state and maintaining all state funds and securities.[30] The CFO, using generally accepted auditing procedures for testing or sampling, must examine, audit, and settle all accounts, claims, and demands, whatsoever, against the State, arising under any law or resolution of the Legislature, and issue a warrant directing the payment out of the State Treasury of such amount as he or she allows thereon.[31] The CFO may adopt and disseminate to the agencies procedural and documentation standards for payment requests and may provide training and technical assistance to the agencies for these standards.[32] In addition, the CFO has the legal duty of delivering all state warrants and will be charged with the official responsibility of the protection and security of the state warrants while in his or her custody. The CFO may delegate this authority to other state agencies or officers.[33]

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responsive bids, proposals, or replies are received; and contract renewals. Employees must provide documentation to show compliance with the experience and participation requirements when submitting the application.

[25] Section 287.057(17)(b), F.S.

[26] *Id.*

[27] In order to register, a vendor must provide the following information: (1) Company Name; (2) Federal Tax ID; (3) Tax Filing Name; (4) Business Location; (5) Commodities and Services Offered; and (5) Certified Business and Enterprise Status. *See* The Department of Management Services, *Vendor Resources*, available at https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_resources (last visited, February 7, 2022).

[28] *See* The Department of Management Services, *Vendor Resources*, available at https://vendor.myfloridamarketplace.com/vms-web/spring/login?execution=e1s1 (last visited, February 7, 2022).

[29] *Id.*

[30] Section 17.001, F.S.

[31] Section 17.03(1), F.S.

[32] Section 17.03(3), F.S.

[33] Section 17.03(4), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 287.057, F.S., to permit an agency to establish financial stability criteria when determining whether a vendor is responsible and to require a vendor to demonstrate its financial stability during the competitive solicitation process. Any agency that requires a vendor to show financial stability[34] during a competitive solicitation process must accept any of the following as evidence of financial stability:

- Audited financial statements that demonstrate the vendor's satisfaction of financial stability criteria;
- Documentation of an investment-grade rating from a credit rating agency designated as a nationally recognized statistical rating organization by the Securities and Exchange Commission; or
- For a vendor with annual revenues exceeding $10 million, a letter issued by the chief financial officer or controller verifying such vendor's satisfaction of financial stability criteria.
- For a vendor that previously provided substantially similar services, unaudited financial statements demonstrating such vendor's previous performance of substantially similar services.

The section defines the term "financial stability" to mean the capacity to, at a minimum, efficiently allocate resources, assess and manage financial risks, and fully perform the contract requirements, for the term of the contract.

Section 2 provides that the bill takes effect 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, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[34] This is not a defined term in ch. 287, F.S.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Some vendors may experience an increase in costs associated with acquiring the required evidence to prove financial stability.

C. Government Sector Impact:

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 287.057 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.)

PCS 705416 by Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government):
The committee substitute:

- Allows a vendor whose annual revenue is only $10 million, instead of $1 billion, to verify satisfaction of financial stability criteria with a letter issued by its chief financial officer or controller; and
- Allows a vendor that has provided substantially similar services to provide unaudited financial statements to demonstrate its previous performance of substantially similar services.

CS by Governmental Oversight and Accountability on January 26, 2022:
The CS does the following:

- Permits an agency to establish financial stability criteria when determining whether a vendor is responsible and to require a vendor to demonstrate its financial stability during the competitive solicitation process;
- Clarifies language regarding evidence of financial stability; and
- Defines the term "financial stability" to mean the capacity to, at a minimum, efficiently allocate resources, assess and manage financial risks, and fully perform the contract requirements, for the term of the contract.

B. Amendments:

None.

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


705416

576-03104-22

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Agriculture, Environment, and General Government)

A bill to be entitled

An act relating to evidence of vendor financial stability; amending s. 287.057, F.S.; authorizing an agency, in making a certain determination, to establish financial stability criteria and require a demonstration of financial stability; providing that an agency that requires a vendor to demonstrate financial stability during a competitive solicitation process must accept certain evidence; defining the term "financial stability"; providing an effective date.

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

Section 1. Subsection (27) is added to section 287.057, Florida Statutes, to read:

287.057 Procurement of commodities or contractual services.—

(27)(a) In determining whether a vendor is a responsible vendor as defined in s. 287.012, an agency may establish financial stability criteria and require a vendor to demonstrate its financial stability. If an agency requires a vendor to demonstrate financial stability during the competitive solicitation process, the agency must accept any of the following as evidence of the vendor's financial stability:

1. Audited financial statements that demonstrate the


705416

576-03104-22

vendor's satisfaction of financial stability criteria.

2. Documentation of an investment-grade rating from a credit rating agency designated as a nationally recognized statistical rating organization by the Securities and Exchange Commission.

3. For a vendor with annual revenues exceeding $10 million, a letter issued by the vendor's chief financial officer or controller verifying such vendor's satisfaction of financial stability criteria.

4. For a vendor that previously provided substantially similar services, unaudited financial statements demonstrating such vendor's previous performance of substantially similar services.

(b) For purposes of this section, the term "financial stability" means the capacity to, at a minimum, efficiently allocate resources, assess and manage financial risks, and fully perform the contract requirements for the term of the contract.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1952
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Governmental Oversight and Accountability Committee; and Senator Albritton
SUBJECT:	Evidence of Vendor Financial Stability
DATE:	March 1, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Limones-Borja	McVaney	GO	**Fav/CS**
2.	Davis	Betta	AEG	**Recommend: Fav/CS**
3.	Davis	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1952 permits an agency to establish financial stability criteria when determining whether a vendor is responsible and to require a vendor to demonstrate its financial stability during the competitive solicitation process. The bill specifies three forms of evidence an agency must accept if it requires a vendor to show financial stability during the competitive solicitation process for the procurement of commodities and contractual services. Such evidence includes:

- Audited financial statements that demonstrate the vendor's satisfaction of financial stability criteria.
- Documentation of an investment-grade rating from a credit rating agency designated as a nationally recognized statistical rating organization by the Securities and Exchange Commission.
- For a vendor with annual revenues exceeding $10 million, a letter issued by the chief financial officer or controller verifying such vendor's satisfaction of financial stability criteria.
- For a vendor that previously provided substantially similar services, unaudited financial statements demonstrating such vendor's previous performance of substantially similar services.

The bill defines the term "financial stability" to mean the capacity to, at a minimum, efficiently allocate resources, assess and manage financial risks, and fully perform the contract requirements, for the term of the contract.

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

The bill takes effect July 1, 2022.

II. Present Situation:

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency procurement of personal property and services. The term "agency" is defined broadly to mean any unit of the executive branch of state government.[1] The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and contractual services, as well as commodities needed to support agency activities.[2]

The DMS is authorized to evaluate contracts let by the federal government, another state, or a political subdivision for the provision of commodities and contract services and, when it is determined to be cost effective and in the best interest of the state, to enter into written agreements authorizing a state agency to make purchases under such contract.[3] The DMS negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.

Section 287.017, F.S., establishes the purchasing categories, which are threshold amounts linked to other requirements in ch. 287, F.S., as follows:

- Category One: $20,000;
- Category Two: $35,000;
- Category Three: $65,000;
- Category Four: $195,000; and
- Category Five: $325,000.

State Term Contracts & Request for Quotes

Section 287.056, F.S., requires agencies and permits eligible users[4] to purchase commodities and contractual services from purchasing agreements and state term contracts[5] procured by the DMS.

[1] Section 287.012(1), F.S., defines the term "agency" to mean any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.
[2] *See* ss. 287.032 and 287.042, F.S.
[3] Section 287.042(16), F.S.
[4] Section 287.012(11), F.S., defines "eligible user" to mean any person or entity authorized by the DMS pursuant to rule to purchase from state term contracts or to use the online procurement system.
[5] Section 287.012(28), F.S., defines "state term contract" to mean a term contract that is competitively procured by the DMS pursuant to s. 287.057, F.S., and that is used by agencies and eligible users pursuant to s. 287.056, F.S.

Agencies and eligible users may use a request for quote, to obtain written pricing or services information from a state term contract vendor to determine whether a more favorable price, term, or condition than that provided in the state term contract is available.[6] The use of a request for quote does not constitute a decision subject to protest.[7] Rule 60A-1.043, Florida Administrative Code, requires agencies to request at least two quotes from state term contracts with multiple vendors, unless (i) the purchase is less than Category One ($20,000), or (ii) the state term contract requires otherwise. Agencies must document the justification for a selection based on receipt of less than two quotes.[8]

Competitive Solicitation

With certain exceptions,[9] the procurement of commodities or contractual services in excess of Category Two, $35,000, requires agencies to use a competitive solicitation process.[10] Any form of competitive solicitation must be made available simultaneously to all vendors, must include the time and date for the receipt of bids, proposals, or replies, and must include all contractual terms and conditions applicable to the procurement.[11] Depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors, agencies may use a variety of methods, including:

- Single source contracts,[12] used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid (ITB),[13] used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results. The agency specifically defines the scope of work for the contractual service and establishes precise specifications for the commodity or group of commodities;
- Requests for proposals (RFP),[14] which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate (ITN),[15] which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services, by an agency dealing with a limited number of vendors. Agencies must specify the criteria in determining the acceptability and selection of the vendors in which the agency will invite to negotiate.

Chapter 287, F.S., grants an agency discretion in setting criteria for the award of a contract via competitive solicitation. For example, s. 287.057(1)(b)4., F.S., which governs the award of a

[6] Section 287.056(2), F.S.
[7] Section 287.056(2), F.S.
[8] Rule 60A-1.043, F.A.C.
[9] Section 287.057(3)(e), F.S.
[10] Section 287.057(1), F.S.
[11] *Id.*
[12] Section 287.057(3)(c), F.S.
[13] Section 287.057(1)(a), F.S.
[14] Section 287.057(1)(b), F.S.
[15] Section 287.057(1)(c), F.S.

contract via a RFP, provides that the "contract shall be awarded in writing to the *responsible*[16] *and responsive*[17] vendor whose proposal is determined … to be the most advantageous to the state, taking into consideration the price and other criteria set forth in the request for proposals." Similarly, for an ITN, s. 287.057(1)(c)4., F.S., provides that the "agency shall award the contract to the responsible and responsive vendor that the agency determines will provide the best value to the state." Additional criteria or information requested for determining whether such vendor is responsible include:

- References of the vendor;
- Documents evidencing a vendor's technical expertise; and
- A showing of financial capacity (also referred to as financial ability,[18] financial viability,[19] or financial stability[20]) by submitting financial data, including audited financial statements.

Contract Evaluations and Negotiations

For a contract in excess of $195,000, the agency head must appoint at least three people to evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for which commodities or contractual services are sought.[21] In addition, the agency head must appoint three people[22] to conduct negotiations during an invitation to negotiate procurement who collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for which commodities or contractual services are sought.[23]

If the value of a contract is in excess of $1 million in any fiscal year, at least one of the persons conducting negotiations must be certified as a Florida certified contract negotiator (FCCN)[24] in

[16] Section 287.012(25), F.S., defines "responsible vendor" to mean a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance. This definition includes the financial capacity of the vendor.
[17] Section 287.012(27), F.S., defines "responsive vendor" to mean a vendor that has submitted a bid, proposal, or reply that conforms in all material respected to the solicitation.
[18] See, for example, *The Escambia County School District Request for Proposal #161301*, p. 18, file:///C:/Users/borja.gabriela/Downloads/Bid_161301.pdf.
[19] See, for example, *Department of Juvenile Justice Solicitation #10706 – Statewide Clinical Laboratory Testing Services*, p. 23, file:///C:/Users/borja.gabriela/Downloads/F1236158504_RFP_10706_SolicitationDocument.pdf.
[20] Rule 25-17.0832, F.A.C.
[21] Section 287.057(17)(a)1., F.S.
[22] Section 287.057(17)(b)2, F.S., provides that if the value of the contract is in excess of $1 million in any fiscal year, then at least one person conducting negotiations must be certified as a contract negotiator. If the value of the contract is in excess of $10 million in any fiscal year, then at least one person conducting negotiations must be a Project Management Professional certified by the Project Management Institute.
[23] Section 287.057(17)(a)2., F.S.
[24] Rule 60A-1.041(3), F.A.C., provides that a person must meet the following requirements for FCCN Certification, which is valid for five years or until the expiration date stated on the person's FCCN certificate, whichever is later:

- Successful completion of the FCCN certification course;
- At least 12 months' experience as a purchasing agent, contract manager, or contract administrator for an agency or local government entity, where the job description for the position required that at least half of the employee's designated duties included procuring commodities or contractual services, participating in contract negotiation, contract management, or contract administration, or working as an agency attorney whose duties included providing legal counsel to the agency's purchasing or contracting staff; and
- Experience during the preceding five years in leading at least one federal, state, or local government negotiation team through a negotiated procurement, or participation in at least two federal, state, or local government negotiated procurements. Negotiated procurements include those from a single source; those negotiated when fewer than two

order to ensure that certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing those strategies, and involved appropriately in the procurement process.[25] If the value of a contract is in excess of $10 million in any fiscal year, at least one of the persons conducting negotiations must be a Project Management Professional certified by the Project Management Institute.[26]

Vendor Registration and the Vendor Bid System

Any vendor that wishes to provide goods or services to the state must register in the Vendor Registration System.[27] Once registered, vendors are able to do business with the State of Florida executive branch agencies through the Vendor Information Portal.[28]

The Vendor Bid System (VBS), allows for agencies to post competitive solicitations of $35,000 or more. These solicitations include ITBs, RFPs, and ITNs for all vendors to review. Vendors can then bid, submit proposals, or submit a request to negotiate with the state agency through the VBS. A vendor will be notified through the VBS if its bid has been chosen and proceed by following bid specifications, timelines, and budgets.[29]

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responsive bids, proposals, or replies are received; and contract renewals. Employees must provide documentation to show compliance with the experience and participation requirements when submitting the application.

[25] Section 287.057(17)(b), F.S.

[26] *Id.*

[27] In order to register, a vendor must provide the following information: (1) Company Name; (2) Federal Tax ID; (3) Tax Filing Name; (4) Business Location; (5) Commodities and Services Offered; and (5) Certified Business and Enterprise Status. *See* The Department of Management Services, *Vendor Resources*, available at https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_resources (last visited, February 7, 2022).

[28] *See* The Department of Management Services, *Vendor Resources*, available at https://vendor.myfloridamarketplace.com/vms-web/spring/login?execution=e1s1 (last visited, February 7, 2022).

[29] *Id.*

[30] Section 17.001, F.S.

[31] Section 17.03(1), F.S.

[32] Section 17.03(3), F.S.

[33] Section 17.03(4), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 287.057, F.S., to permit an agency to establish financial stability criteria when determining whether a vendor is responsible and to require a vendor to demonstrate its financial stability during the competitive solicitation process. Any agency that requires a vendor to show financial stability[34] during a competitive solicitation process must accept any of the following as evidence of financial stability:

- Audited financial statements that demonstrate the vendor's satisfaction of financial stability criteria;
- Documentation of an investment-grade rating from a credit rating agency designated as a nationally recognized statistical rating organization by the Securities and Exchange Commission; or
- For a vendor with annual revenues exceeding $10 million, a letter issued by the chief financial officer or controller verifying such vendor's satisfaction of financial stability criteria.
- For a vendor that previously provided substantially similar services, unaudited financial statements demonstrating such vendor's previous performance of substantially similar services.

The section defines the term "financial stability" to mean the capacity to, at a minimum, efficiently allocate resources, assess and manage financial risks, and fully perform the contract requirements, for the term of the contract.

Section 2 provides that the bill takes effect 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, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[34] This is not a defined term in ch. 287, F.S.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Some vendors may experience an increase in costs associated with acquiring the required evidence to prove financial stability.

C. Government Sector Impact:

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 287.057 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on February 28, 2022:
The committee substitute:

- Allows a vendor whose annual revenue is only $10 million, instead of $1 billion, to verify satisfaction of financial stability criteria with a letter issued by its chief financial officer or controller; and
- Allows a vendor that has provided substantially similar services to provide unaudited financial statements to demonstrate its previous performance of substantially similar services.

CS by Governmental Oversight and Accountability on January 26, 2022:
The CS does the following:

- Permits an agency to establish financial stability criteria when determining whether a vendor is responsible and to require a vendor to demonstrate its financial stability during the competitive solicitation process;
- Clarifies language regarding evidence of financial stability; and
- Defines the term "financial stability" to mean the capacity to, at a minimum, efficiently allocate resources, assess and manage financial risks, and fully perform the contract requirements, for the term of the contract.

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 Governmental Oversight and Accountability; and Senator Albritton

585-02338-22 20221952c1

A bill to be entitled

An act relating to evidence of vendor financial stability; amending s. 287.057, F.S.; authorizing an agency, in making a certain determination, to establish financial stability criteria and require a demonstration of financial stability; providing that an agency that requires a vendor to demonstrate financial stability during a competitive solicitation process must accept certain evidence; defining the term "financial stability"; providing an effective date.

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

Section 1. Subsection (27) is added to section 287.057, Florida Statutes, to read:

287.057 Procurement of commodities or contractual services.—

(27)(a) In determining whether a vendor is a responsible vendor as defined in s. 287.012, an agency may establish financial stability criteria and require a vendor to demonstrate its financial stability. If an agency requires a vendor to demonstrate financial stability during the competitive solicitation process, the agency must accept any of the following as evidence of the vendor's financial stability:

1. Audited financial statements that demonstrate the vendor's satisfaction of financial stability criteria.

2. Documentation of an investment-grade rating from a credit rating agency designated as a nationally recognized

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statistical rating organization by the Securities and Exchange Commission.

3. For a vendor with annual revenues exceeding $1 billion, a letter issued by the chief financial officer or controller verifying such vendor's satisfaction of financial stability criteria.

(b) For purposes of this section, the term "financial stability" means the capacity to, at a minimum, efficiently allocate resources, assess and manage financial risks, and fully perform the contract requirements for the term of the contract.

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

2/28/22
Meeting Date

Appropriations
Committee

1952 (on consent)
Bill Number or Topic

Amendment Barcode (if applicable)

Name Abby Vail

Phone 850-577-0444

Address 201 E. Park Ave, 5th Floor
Street

Email abby@ballardpartners.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: KPMG

☐ 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 Appropriations

BILL:	PCS/SB 7012 (972752)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); and Environment and Natural Resources Committee
SUBJECT:	Per- and Polyfluoroalkyl Substances Task Force
DATE:	February 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Anderson/Collazo	Rogers		**EN Submitted as Committee Bill**
1.	Reagan	Betta	AEG	**Recommend: Fav/CS**
2.	Reagan	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 7012 does the following:

- Requires the Department of Environmental Protection (DEP) to adopt by rule statewide cleanup target levels (CTLs) for perfluoroalkyl and polyfluoroalkyl substances (PFAS) in soils and groundwater, which do not take effect until ratified by the Legislature;
- Provides a limitation of liability, until DEP's rules have been ratified for a particular PFAS constituent, from actions brought by local or state government entities to compel or enjoin site rehabilitation, require payment of site rehabilitation costs, or require payment of fines or penalties regarding rehabilitation based on the presence of that particular PFAS constituent;
- Tolls any statute of limitations that would bar a state or local government entity from pursuing relief under its existing authority, from the effective date of the act until site rehabilitation is complete or the Legislature ratifies the CTLs;
- Requires the Office of Program Policy Analysis and Government Accountability to conduct an analysis of programs in other states for the assessment and cleanup of soils and groundwater contamination, and submit a report of its findings and recommendations to the Governor and Legislature by January 1, 2023; and

Requires the DEP to adopt by rule cleanup target levels for PFAS in soils and groundwater which may result in increased costs for the DEP.

II. Present Situation:

Cleanup Target Levels

A cleanup target level (CTL) is the concentration for each contaminant identified by an applicable analytical test method, in the medium of concern, at which a site rehabilitation program is deemed complete.[1] The Department of Environmental Protection (DEP) establishes by rule CTLs for specific contaminants.[2] These CTLs apply to requirements for site rehabilitation across numerous programs.

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Risk-Based Corrective Action (RBCA) is a decision-making process that combines site assessments and responses to chemical releases with human health and environmental risk assessments to determine the need for remedial action and tailor corrective actions to site-specific conditions and risks, which can vary greatly.[3]

In Florida, prior to 2003, RBCA was only used under specific DEP programs such as the brownfields or petroleum programs, and contamination at a site was typically remediated to the default CTLs contained in ch. 62-777 of the Florida Administrative Code.[4] This meant there was little flexibility for site-specific remediation strategies.[5]

In 2003, the Legislature created s. 376.30701, F.S., to establish a "global RBCA" process.[6] The original goal was a flexible site-specific cleanup process reflecting the intended use of the property following cleanup, while maintaining adequate protection of human health, safety, and the environment through the evaluation of contamination toxicity and exposure pathways.[7] Section 376.30701, F.S., applies to all contaminated sites resulting from a discharge of pollutants or hazardous substances where legal responsibility for site rehabilitation exists, except for those contaminated sites subjected to the risk-based corrective action cleanup criteria established for the petroleum, brownfields, and drycleaning programs pursuant to ss. 376.3071, 376.81, and 376.3078, F.S., respectively.[8]

The statute requires the DEP to establish by rule criteria for determining on a site-specific basis the tasks comprising a site rehabilitation program and the level at which a task and a program

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[1] Section 376.301(8), F.S.
[2] *See generally* Fla. Admin. Code Ch. 62-777.
[3] Dep't of Environmental Protection (DEP), *Contaminated Soils Forum -- Policy Group, Waste Cleanup Focus Group, Issues paper-- "Universal" Applicability of Risk-Based Correction Action at Florida Waste Cleanup Sites*, 2 (1998), *available at* https://floridadep.gov/sites/default/files/Universal-applicability-of-risk-based-corrective-action.pdf (last visited Jan. 18, 2022).
[4] Ralph DeMeo et al., *Risk-Based Corrective Action in Florida: How is it Working?*, 89 FLORIDA BAR JOURNAL 1, 47 (Jan. 2015), https://www.floridabar.org/the-florida-bar-journal/risk-based-corrective-action-in-florida-how-is-it-working/ (last visited Jan. 18, 2022).
[5] *Id*.
[6] *See* ch. 2003-173, s. 1, Laws of Fla.
[7] Ralph DeMeo et al., *Risk-Based Corrective Action in Florida: How is it Working?*, 89 FLORIDA BAR JOURNAL 1, 47 (Jan. 2015), https://www.floridabar.org/the-florida-bar-journal/risk-based-corrective-action-in-florida-how-is-it-working/ (last visited Jan. 18, 2022).
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may be deemed completed.[9] Section 376.30701, F.S., contains requirements for determining or establishing appropriate CTLs for groundwater and soil using RBCA principles.[10]

Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)

Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) are a group of thousands of man-made compounds developed to provide oil and water repellency, chemical and thermal stability, and friction reduction.[11] Perfluorooctane sulfonic acid (PFOS) and perfluorooctanoic acid (PFOA) are the most common and the best-studied of these compounds.[12] PFAS were widely used since the 1950s, with applications in many industries, including the aerospace, semiconductor, medical, automotive, construction, electronics, and aviation industries, as well as in consumer products (e.g., carpets, clothing, furniture, outdoor equipment, food packaging) and firefighting applications.[13] While U.S. manufacturers have voluntarily phased out use of the chemicals,[14] they persist in the environment, particularly at fire colleges, airports, and military installations.[15] Although PFOA and PFOS are no longer manufactured in the U.S., they are still produced internationally and can be imported into the U.S. in consumer goods such as carpet, leather and apparel, textiles, paper and packaging, coatings, rubber, and plastics.[16]

PFAS chemicals do not break down in the environment, can move through soil and water, and can accumulate in fish and wildlife.[17] Because of the widespread use and ease of transport, they can be found virtually everywhere. The Centers for Disease Control and Prevention has detected PFAS in nearly all persons it has tested, indicating widespread exposure in the U.S. population.[18] Based on recent studies, health effects from PFAS potentially include increased risk of certain cancers, increased cholesterol levels, impacts on hormones and the immune system, and fetal and infant developmental effects.[19]

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[9] Section 376.30701(2), F.S.
[10] *Id*.
[11] Interstate Technology Regulatory Council (ITRC), *History and Use of PFAS*, 1 (2020), *available at* https://pfas-1.itrcweb.org/wp-content/uploads/2020/10/history_and_use_508_2020Aug_Final.pdf (last visited Jan. 18, 2022).
[12] Dep't of Health (DOH), *PFAS Chemical Awareness*, http://www.floridahealth.gov/environmental-health/hazardous-waste-sites/contaminant-facts/_documents/doh-pfas-poster.pdf (last visited Jan. 18, 2022).
[13] ITRC, *History and Use of PFAS*, 1, 8 (2020), *available at* https://pfas-1.itrcweb.org/wp-content/uploads/2020/10/history_and_use_508_2020Aug_Final.pdf (last visited Jan. 18, 2022).
[14] DEP, *PFAS Update, Presentation to the Florida Senate Committee on Environment and Natural Resources*, 18:00 (Dec. 9, 2019), *available at* https://thefloridachannel.org/videos/12-9-19-senate-committee-on-environment-and-natural-resources/ (last visited Jan. 18, 2022). In the U.S., PFOS was phased out of production around 2002, and PFOA was phased out around 2015.
[15] U.S. Environmental Protection Agency (EPA), *PFAS Explained*, https://www.epa.gov/pfas/pfas-explained (last visited Jan. 18, 2022); EPA, *Our Current Understanding of the Human Health and Environmental Risks of PFAS*, https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas (last visited Jan. 18, 2022).
[16] *Id.; see also* DEP, *PFAS Update, Presentation to the Florida Senate Committee on Environment and Natural Resources*, 18:00 (Dec. 9, 2019), *available at* https://thefloridachannel.org/videos/12-9-19-senate-committee-on-environment-and-natural-resources/ (last visited Jan. 18, 2022).
[17] Centers for Disease Control and Prevention, *Per- and Polyfluorinated Substances (PFAS) Factsheet*, https://www.cdc.gov/biomonitoring/PFAS_FactSheet.html (last visited Jan. 18, 2022).
[18] *Id*.
[19] DOH, *PFAS Chemical Awareness*, 2, http://www.floridahealth.gov/environmental-health/hazardous-waste-sites/contaminant-facts/_documents/doh-pfas-poster.pdf (last visited Jan. 18, 2022).

While the health effects from low-level concentrations of PFAS are not yet fully understood, litigation and public interest is increasing nation-wide.[20] In Florida, generally, issues exist regarding liability for cleanup and third-party liability.[21]

The U.S. Environmental Protection Agency (EPA) prioritizes research and data collection for new chemicals that are being discovered in water that previously had not been detected or are being detected at levels that may be different than expected.[22] These are called "contaminants of emerging concern" (CEC). While CECs do not have regulatory limits, there may be a long-term potential risk to human health or the environment associated with them. As part of the EPA's data collection on CECs, all large and selected smaller public water systems across the U.S. are required to monitor for CECs.[23] Once the EPA's study and evaluation is complete, if the EPA decides not to regulate a CEC, then it may decide to develop a health advisory level (HAL) for the detected contaminants. While HALs are non-enforceable federal limits, they serve as technical guidance for federal, state, and local officials.[24] For drinking water, the EPA has established a HAL of 70 parts per trillion for PFOA and PFOS.[25] The Department of Health (DOH) has adopted the same HAL for those compounds.[26]

The DEP has established provisional CTLs for PFAS to enable site cleanup under the DEP's contaminated site cleanup criteria.[27] The DEP has created numerical provisional CTLs and screening levels for PFOS and PFOA in the following categories: Provisional Groundwater CTLs, Provisional Soil CTLs, Provisional Irrigation Water Screening Levels, and Surface Water Screening Levels.[28] These provisional standards are designed to protect human health, and the provisional groundwater CTLs are the same as the EPA's HAL for drinking water.

PFAS is common in firefighting foams that have been stored and used for fire suppression, fire training, and flammable vapor suppression.[29] These firefighting agents include Class B fluorine-containing firefighting foams, such as aqueous film-forming foam (AFFF).[30] PFAS are so prevalent in firefighting agents that at least nine states have passed legislation to restrict or

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[20] Ralph A. DeMeo & Jorge Caspary, *PFApocalypse Now: The PFAS Firestorm and Implications for Florida*, 94 FLORIDA BAR JOURNAL 3, 46 (May/June 2020), https://www.floridabar.org/the-florida-bar-journal/pfapocalypse-now-the-pfas-firestorm-and-implications-for-florida/#u7068 (last visited Jan. 18, 2022).
[21] *Id*.
[22] DEP, *Regulated Drinking Water Contaminants and Contaminants of Emerging Concern*, https://floridadep.gov/comm/press-office/content/regulated-drinking-water-contaminants-and-contaminants-emerging-concern (last visited Jan. 18, 2022).
[23] *Id*.
[24] EPA, *How EPA Regulates Drinking Water Contaminants*, https://www.epa.gov/dwregdev/how-epa-regulates-drinking-water-contaminants (last visited Jan. 18, 2022).
[25] EPA, *Drinking Water Health Advisories for PFOA and PFOS*, https://www.epa.gov/ground-water-and-drinking-water/drinking-water-health-advisories-pfoa-and-pfos (last visited Jan. 18, 2022).
[26] DOH, *Maximum Contaminant Levels and Health Advisory Levels*, 5 (2016) *available at* http://www.floridahealth.gov/environmental-health/drinking-water/_documents/hal-list.pdf (last visited Jan. 18, 2022).
[27] DEP, *PFAS Update, Presentation to the Florida Senate Committee on Environment and Natural Resources*, 25:00 (Dec. 9, 2019), *available at* https://thefloridachannel.org/videos/12-9-19-senate-committee-on-environment-and-natural-resources/ (last visited Jan. 18, 2022); *see* Fla. Admin. Code Ch. 62-780.
[28] DEP, *Per-and Polyfluoroalkyl Substances (PFAS) Dynamic Plan*, 9-10 (Feb. 2021), *available at* https://floridadep.gov/sites/default/files/Dynamic_Plan_Revised_Feb2021.pdf (last visited Jan. 18, 2022).
[29] ITRC, *PFAS*, https://pfas-1.itrcweb.org/3-firefighting-foams/ (last visited Jan. 18, 2022).
[30] *Id*.

prohibit the use of PFAS in firefighting agents or activities.[31] In Florida, the DEP has already assessed each fire training facility in the state to ensure that PFAS-containing firefighting agents are disposed of and that only firefighting agents that do not have PFAS are being used.[32] Of the 25 active facilities in the state with known or suspected use of AFFF, investigations indicate that 22 of the 25 had analytical results for PFOA and PFOS above the provisional groundwater CTL.[33] Where contamination is identified, the DEP will help the facility develop a cleanup plan to remove or contain the contamination to prevent future environmental impact and human exposure.[34]

In February of 2021, the DEP published the current version of its PFAS Dynamic Plan.[35] The Dynamic Plan establishes a comprehensive path forward with the understanding that it may be necessary to change the approach as the science associated with these emerging contaminants continues to develop.[36] The plan describes the current screening and provisional CTLs, and summarizes data and lessons learned from prior and ongoing investigations. The plan states that future investigations will be based on potential risk and will include a continued coordinated response with the DOH to quickly evaluate and address any impacts to drinking water resources.[37]

III. Effect of Proposed Changes:

Section 1 creates s. 376.91, F.S., entitled "Statewide cleanup of perfluoroalkyl and polyfluoroalkyl substances."

The bill contains a definitions section, defining two terms as they are used in s. 376.91, F.S.:

- "Department" is defined as "the Department of Environmental Protection."
- "PFAS" is defined as "perfluoroalkyl and polyfluoroalkyl substances, including perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS)."

The bill requires the DEP to adopt by rule statewide cleanup target levels for PFAS in soils and groundwater. These cleanup target levels must be developed using the criteria set forth in s. 376.30701, F.S., which establishes a process for risk-based corrective action, and priority must be given to PFOA and PFOS. The bill prohibits these cleanup target levels from taking effect until ratified by the Legislature.

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[31] National Law Review, *Expert Focus: US States Outpace EPA on PFAS Firefighting Foam Laws*, https://www.natlawreview.com/article/expert-focus-us-states-outpace-epa-pfas-firefighting-foam-laws (last visited Jan. 18, 2022); The New York State Senate, *Senate Bill S439A*, https://www.nysenate.gov/legislation/bills/2019/S439 (last visited Jan. 18, 2022).

[32] DEP, *PFAS Update, Presentation to the Florida Senate Committee on Environment and Natural Resources*, 36:00 (Dec. 9, 2019), *available at* https://thefloridachannel.org/videos/12-9-19-senate-committee-on-environment-and-natural-resources/ (last visited Jan. 18, 2022).

[33] DEP, *Per-and Polyfluoroalkyl Substances (PFAS) Dynamic Plan*, 12 (Feb. 2021), *available at* https://floridadep.gov/sites/default/files/Dynamic_Plan_Revised_Feb2021.pdf (last visited Jan. 18, 2022).

[34] DEP, *Fire Training Facility Preliminary Site Assessments*, https://floridadep.gov/waste/waste-cleanup/content/fire-training-facility-preliminary-site-assessments (last visited Jan. 18, 2022).

[35] *See* DEP, *Per-and Polyfluoroalkyl Substances (PFAS) Dynamic Plan* (Feb. 2021), *available at* https://floridadep.gov/sites/default/files/Dynamic_Plan_Revised_Feb2021.pdf (last visited Jan. 18, 2022).

[36] *Id*. at 3.

[37] *Id*.

The bill provides that, until the DEP's rule for a particular PFAS constituent has been ratified by the Legislature, a person may not be subject to any administrative or judicial action brought by or on behalf of any state or local governmental entity to compel or enjoin site rehabilitation, to require payment for the costs of rehabilitation of environmental contamination, or to require payment of any fines or penalties regarding rehabilitation based on the presence of that particular PFAS constituent. The bill tolls any statute of limitations that would bar a state or local government entity from pursuing relief in accordance with its existing authority, from the effective date of the bill until site rehabilitation is completed or cleanup target levels are ratified by the Legislature. The bill states that it does not affect the ability or authority to seek contribution from any person who may have liability with respect to a contaminated site and who did not receive the liability protection provided by the bill.

Section 2 directs the Division of Law Revision to replace the phrase "the effective date of this act" wherever it occurs in the bill with the date the bill becomes a law.

Section 3 states 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:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill's liability protections against state and local government actions regarding site rehabilitation for PFAS constituents may have an indeterminate, positive fiscal impact on private entities that receive such liability protections.

C. Government Sector Impact:

The bill may result in increased costs for the DEP. The bill requires the DEP to adopt by rule cleanup target levels for PFAS in soils and groundwater.

The bill's liability protections against state and local government actions regarding site rehabilitation for PFAS constituents may have an indeterminate, positive fiscal impact on public entities that receive such liability protections.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 376.91 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.)

PCS (972752) by Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government):
The committee substitute:

- Removes all provisions of the PFAS Task Force;
- Provides definitions for the "Department" and "PFAS";
- Requires the Department of Environmental Protection (DEP) to adopt by rule statewide cleanup target levels (CTLs) for perfluoroalkyl and polyfluoroalkyl substances (PFAS) in soils and groundwater, which do not take effect until ratified by the Legislature;
- Provides a limitation of liability, until the DEP's rules have been ratified for a particular PFAS constituent, from actions brought by local or state government entities to compel or enjoin site rehabilitation, require payment of site rehabilitation costs, or require payment of fines or penalties regarding rehabilitation based on the presence of that particular PFAS constituent; and

- Tolls any statute of limitations that would bar a state or local government entity from pursuing relief under its existing authority, from the effective date of the act until site rehabilitation is complete or the Legislature ratifies the CTLs.

B. Amendments:

None.

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



576-02677-22

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Agriculture, Environment, and General Government)

A bill to be entitled

An act relating to cleanup of perfluoroalkyl and polyfluoroalkyl substances; creating s. 376.91, F.S.; defining terms; requiring the Department of Environmental Protection to adopt rules for statewide cleanup target levels for perfluoroalkyl and polyfluoroalkyl substances in soil and groundwater by a specified date; prohibiting such rules from taking effect until ratified by the Legislature; providing that certain persons are not subject to administrative or judicial action under certain circumstances; providing that certain statutes of limitations are tolled from a specified date; providing construction; providing a directive to the Division of Law Revision; providing an effective date.

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

Section 1. Section 376.91, Florida Statutes, is created to read:

376.91 Statewide cleanup of perfluoroalkyl and polyfluoroalkyl substances.—

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

(a) "Department" means the Department of Environmental Protection.

(b) "PFAS" means perfluoroalkyl and polyfluoroalkyl



576-02677-22

substances, including perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS).

(2) STATEWIDE CLEANUP TARGET LEVELS.—

(a) By January 1, 2023, the department shall adopt by rule statewide cleanup target levels for PFAS in soil and groundwater using criteria set forth in s. 376.30701, with priority given to PFOA and PFOS. The rules for statewide cleanup target levels may not take effect until ratified by the Legislature.

(b) Until the department's rule for a particular PFAS constituent has been ratified by the Legislature, a governmental entity or private water supplier may not be subject to any administrative or judicial action under this chapter brought by any state or local governmental entity to compel or enjoin site rehabilitation, to require payment for the cost of rehabilitation of environmental contamination, or to require payment of any fines or penalties regarding rehabilitation based on the presence of that particular PFAS constituent.

(c) Until site rehabilitation is completed or rules for statewide cleanup target levels are ratified by the Legislature, any statute of limitations that would bar a state or local governmental entity from pursuing relief in accordance with its existing authority is tolled from the effective date of this act.

(d) This section does not affect the ability or authority to seek any recourse or relief from any person who may have liability with respect to a contaminated site and who did not receive protection under paragraph (b).

Section 2. 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 this act becomes a law.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 7012
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); and Environment and Natural Resources Committee
SUBJECT:	Per- and Polyfluoroalkyl Substances Task Force
DATE:	March 1, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Anderson/Collazo	Rogers		**EN Submitted as Committee Bill**
1.	Reagan	Betta	AEG	**Recommend: Fav/CS**
2.	Reagan	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7012 does the following:

- Requires the Department of Environmental Protection (DEP) to adopt by rule statewide cleanup target levels (CTLs) for perfluoroalkyl and polyfluoroalkyl substances (PFAS) in soils and groundwater, which do not take effect until ratified by the Legislature;
- Provides a limitation of liability, until DEP's rules have been ratified for a particular PFAS constituent, from actions brought by local or state government entities to compel or enjoin site rehabilitation, require payment of site rehabilitation costs, or require payment of fines or penalties regarding rehabilitation based on the presence of that particular PFAS constituent;
- Tolls any statute of limitations that would bar a state or local government entity from pursuing relief under its existing authority, from the effective date of the act until site rehabilitation is complete or the Legislature ratifies the CTLs;
- Requires the Office of Program Policy Analysis and Government Accountability to conduct an analysis of programs in other states for the assessment and cleanup of soils and groundwater contamination, and submit a report of its findings and recommendations to the Governor and Legislature by January 1, 2023; and

Requires the DEP to adopt by rule cleanup target levels for PFAS in soils and groundwater which may result in increased costs for the DEP.

II. Present Situation:

Cleanup Target Levels

A cleanup target level (CTL) is the concentration for each contaminant identified by an applicable analytical test method, in the medium of concern, at which a site rehabilitation program is deemed complete.[1] The Department of Environmental Protection (DEP) establishes by rule CTLs for specific contaminants.[2] These CTLs apply to requirements for site rehabilitation across numerous programs.

Risk-Based Corrective Action

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[9] Section 376.30701(2), F.S.
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[11] Interstate Technology Regulatory Council (ITRC), *History and Use of PFAS*, 1 (2020), *available at* https://pfas-1.itrcweb.org/wp-content/uploads/2020/10/history_and_use_508_2020Aug_Final.pdf (last visited Jan. 18, 2022).
[12] Dep't of Health (DOH), *PFAS Chemical Awareness*, http://www.floridahealth.gov/environmental-health/hazardous-waste-sites/contaminant-facts/_documents/doh-pfas-poster.pdf (last visited Jan. 18, 2022).
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[19] DOH, *PFAS Chemical Awareness*, 2, http://www.floridahealth.gov/environmental-health/hazardous-waste-sites/contaminant-facts/_documents/doh-pfas-poster.pdf (last visited Jan. 18, 2022).

While the health effects from low-level concentrations of PFAS are not yet fully understood, litigation and public interest is increasing nation-wide.[20] In Florida, generally, issues exist regarding liability for cleanup and third-party liability.[21]

The U.S. Environmental Protection Agency (EPA) prioritizes research and data collection for new chemicals that are being discovered in water that previously had not been detected or are being detected at levels that may be different than expected.[22] These are called "contaminants of emerging concern" (CEC). While CECs do not have regulatory limits, there may be a long-term potential risk to human health or the environment associated with them. As part of the EPA's data collection on CECs, all large and selected smaller public water systems across the U.S. are required to monitor for CECs.[23] Once the EPA's study and evaluation is complete, if the EPA decides not to regulate a CEC, then it may decide to develop a health advisory level (HAL) for the detected contaminants. While HALs are non-enforceable federal limits, they serve as technical guidance for federal, state, and local officials.[24] For drinking water, the EPA has established a HAL of 70 parts per trillion for PFOA and PFOS.[25] The Department of Health (DOH) has adopted the same HAL for those compounds.[26]

The DEP has established provisional CTLs for PFAS to enable site cleanup under the DEP's contaminated site cleanup criteria.[27] The DEP has created numerical provisional CTLs and screening levels for PFOS and PFOA in the following categories: Provisional Groundwater CTLs, Provisional Soil CTLs, Provisional Irrigation Water Screening Levels, and Surface Water Screening Levels.[28] These provisional standards are designed to protect human health, and the provisional groundwater CTLs are the same as the EPA's HAL for drinking water.

PFAS is common in firefighting foams that have been stored and used for fire suppression, fire training, and flammable vapor suppression.[29] These firefighting agents include Class B fluorine-containing firefighting foams, such as aqueous film-forming foam (AFFF).[30] PFAS are so prevalent in firefighting agents that at least nine states have passed legislation to restrict or

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[20] Ralph A. DeMeo & Jorge Caspary, *PFApocalypse Now: The PFAS Firestorm and Implications for Florida*, 94 FLORIDA BAR JOURNAL 3, 46 (May/June 2020), https://www.floridabar.org/the-florida-bar-journal/pfapocalypse-now-the-pfas-firestorm-and-implications-for-florida/#u7068 (last visited Jan. 18, 2022).
[21] *Id*.
[22] DEP, *Regulated Drinking Water Contaminants and Contaminants of Emerging Concern*, https://floridadep.gov/comm/press-office/content/regulated-drinking-water-contaminants-and-contaminants-emerging-concern (last visited Jan. 18, 2022).
[23] *Id*.
[24] EPA, *How EPA Regulates Drinking Water Contaminants*, https://www.epa.gov/dwregdev/how-epa-regulates-drinking-water-contaminants (last visited Jan. 18, 2022).
[25] EPA, *Drinking Water Health Advisories for PFOA and PFOS*, https://www.epa.gov/ground-water-and-drinking-water/drinking-water-health-advisories-pfoa-and-pfos (last visited Jan. 18, 2022).
[26] DOH, *Maximum Contaminant Levels and Health Advisory Levels*, 5 (2016) *available at* http://www.floridahealth.gov/environmental-health/drinking-water/_documents/hal-list.pdf (last visited Jan. 18, 2022).
[27] DEP, *PFAS Update, Presentation to the Florida Senate Committee on Environment and Natural Resources*, 25:00 (Dec. 9, 2019), *available at* https://thefloridachannel.org/videos/12-9-19-senate-committee-on-environment-and-natural-resources/ (last visited Jan. 18, 2022); *see* Fla. Admin. Code Ch. 62-780.
[28] DEP, *Per-and Polyfluoroalkyl Substances (PFAS) Dynamic Plan*, 9-10 (Feb. 2021), *available at* https://floridadep.gov/sites/default/files/Dynamic_Plan_Revised_Feb2021.pdf (last visited Jan. 18, 2022).
[29] ITRC, *PFAS*, https://pfas-1.itrcweb.org/3-firefighting-foams/ (last visited Jan. 18, 2022).
[30] *Id*.

prohibit the use of PFAS in firefighting agents or activities.[31] In Florida, the DEP has already assessed each fire training facility in the state to ensure that PFAS-containing firefighting agents are disposed of and that only firefighting agents that do not have PFAS are being used.[32] Of the 25 active facilities in the state with known or suspected use of AFFF, investigations indicate that 22 of the 25 had analytical results for PFOA and PFOS above the provisional groundwater CTL.[33] Where contamination is identified, the DEP will help the facility develop a cleanup plan to remove or contain the contamination to prevent future environmental impact and human exposure.[34]

In February of 2021, the DEP published the current version of its PFAS Dynamic Plan.[35] The Dynamic Plan establishes a comprehensive path forward with the understanding that it may be necessary to change the approach as the science associated with these emerging contaminants continues to develop.[36] The plan describes the current screening and provisional CTLs, and summarizes data and lessons learned from prior and ongoing investigations. The plan states that future investigations will be based on potential risk and will include a continued coordinated response with the DOH to quickly evaluate and address any impacts to drinking water resources.[37]

III. Effect of Proposed Changes:

Section 1 creates s. 376.91, F.S., entitled "Statewide cleanup of perfluoroalkyl and polyfluoroalkyl substances."

The bill contains a definitions section, defining two terms as they are used in s. 376.91, F.S.:

- "Department" is defined as "the Department of Environmental Protection."
- "PFAS" is defined as "perfluoroalkyl and polyfluoroalkyl substances, including perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS)."

The bill requires the DEP to adopt by rule statewide cleanup target levels for PFAS in soils and groundwater. These cleanup target levels must be developed using the criteria set forth in s. 376.30701, F.S., which establishes a process for risk-based corrective action, and priority must be given to PFOA and PFOS. The bill prohibits these cleanup target levels from taking effect until ratified by the Legislature.

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[31] National Law Review, *Expert Focus: US States Outpace EPA on PFAS Firefighting Foam Laws*, https://www.natlawreview.com/article/expert-focus-us-states-outpace-epa-pfas-firefighting-foam-laws (last visited Jan. 18, 2022); The New York State Senate, *Senate Bill S439A*, https://www.nysenate.gov/legislation/bills/2019/S439 (last visited Jan. 18, 2022).

[32] DEP, *PFAS Update, Presentation to the Florida Senate Committee on Environment and Natural Resources*, 36:00 (Dec. 9, 2019), *available at* https://thefloridachannel.org/videos/12-9-19-senate-committee-on-environment-and-natural-resources/ (last visited Jan. 18, 2022).

[33] DEP, *Per-and Polyfluoroalkyl Substances (PFAS) Dynamic Plan*, 12 (Feb. 2021), *available at* https://floridadep.gov/sites/default/files/Dynamic_Plan_Revised_Feb2021.pdf (last visited Jan. 18, 2022).

[34] DEP, *Fire Training Facility Preliminary Site Assessments*, https://floridadep.gov/waste/waste-cleanup/content/fire-training-facility-preliminary-site-assessments (last visited Jan. 18, 2022).

[35] *See* DEP, *Per-and Polyfluoroalkyl Substances (PFAS) Dynamic Plan* (Feb. 2021), *available at* https://floridadep.gov/sites/default/files/Dynamic_Plan_Revised_Feb2021.pdf (last visited Jan. 18, 2022).

[36] *Id*. at 3.

[37] *Id*.

The bill provides that, until the DEP's rule for a particular PFAS constituent has been ratified by the Legislature, a person may not be subject to any administrative or judicial action brought by or on behalf of any state or local governmental entity to compel or enjoin site rehabilitation, to require payment for the costs of rehabilitation of environmental contamination, or to require payment of any fines or penalties regarding rehabilitation based on the presence of that particular PFAS constituent. The bill tolls any statute of limitations that would bar a state or local government entity from pursuing relief in accordance with its existing authority, from the effective date of the bill until site rehabilitation is completed or cleanup target levels are ratified by the Legislature. The bill states that it does not affect the ability or authority to seek contribution from any person who may have liability with respect to a contaminated site and who did not receive the liability protection provided by the bill.

Section 2 directs the Division of Law Revision to replace the phrase "the effective date of this act" wherever it occurs in the bill with the date the bill becomes a law.

Section 3 states 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:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill's liability protections against state and local government actions regarding site rehabilitation for PFAS constituents may have an indeterminate, positive fiscal impact on private entities that receive such liability protections.

C. Government Sector Impact:

The bill may result in increased costs for the DEP. The bill requires the DEP to adopt by rule cleanup target levels for PFAS in soils and groundwater.

The bill's liability protections against state and local government actions regarding site rehabilitation for PFAS constituents may have an indeterminate, positive fiscal impact on public entities that receive such liability protections.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 376.91 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 Appropriations on February 28, 2022:
The committee substitute:

- Removes all provisions of the PFAS Task Force;
- Provides definitions for the "Department" and "PFAS";
- Requires the Department of Environmental Protection (DEP) to adopt by rule statewide cleanup target levels (CTLs) for perfluoroalkyl and polyfluoroalkyl substances (PFAS) in soils and groundwater, which do not take effect until ratified by the Legislature;
- Provides a limitation of liability, until the DEP's rules have been ratified for a particular PFAS constituent, from actions brought by local or state government entities to compel or enjoin site rehabilitation, require payment of site rehabilitation costs, or require payment of fines or penalties regarding rehabilitation based on the presence of that particular PFAS constituent; and
- Tolls any statute of limitations that would bar a state or local government entity from pursuing relief under its existing authority, from the effective date of the act until site rehabilitation is complete or the Legislature ratifies the CTLs.

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 Environment and Natural Resources

592-01303-22 20227012__

A bill to be entitled

An act relating to a Per- and Polyfluoroalkyl Substances Task Force; creating the task force within the Department of Environmental Protection; providing the membership, organization, and duties of the task force; requiring the department to provide staffing to assist the task force in the performance of its duties; requiring the task force to convene by a specified date; requiring the task force to submit an annual report to the Governor and the Legislature by a specified date; providing requirements for the report; providing for the repeal of the task force; providing an effective date.

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

Section 1. Per- and Polyfluoroalkyl Substances (PFAS) Task Force.—

(1) The PFAS Task Force is created within the Department of Environmental Protection. The task force is composed of the following 16 members:

(a) One representative from each of the following state entities:

1. The Department of Environmental Protection, appointed by the secretary of the department.

2. The Department of Health, appointed by the State Surgeon General.

3. The Department of Agriculture and Consumer Services, appointed by the Commissioner of Agriculture.

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

592-01303-22 20227012__

4. The Division of Emergency Management, appointed by the division director.

5. The Bureau of Fire Standards and Training within the Department of Financial Services, appointed by the Chief Financial Officer.

(b) One representative of each of the following organizations, appointed by the Governor:

1. The Florida League of Cities.

2. The Florida Association of Counties.

3. The Florida Water Environment Association.

4. The Florida Section of the American Water Works Association.

5. The Florida Airports Council.

6. The National Waste and Recycling Association.

7. The Florida Brownfields Association.

8. The Florida Ground Water Association.

9. The Florida Sunshine Chapter of the Solid Waste Association of North America.

10. The Manufacturers Association of Florida.

11. The Florida Professional Firefighters.

(2) The task force shall elect a chair from among its membership. Except as otherwise provided, the task force shall operate in a manner consistent with s. 20.052, Florida Statutes.

(3) The task force shall meet as necessary, but at least quarterly, and may conduct its meetings through teleconferencing or other similar means.

(4) Members of the task force are entitled to receive reimbursement for per diem and travel expenses, pursuant to s. 112.061, Florida Statutes, for service on the task force.

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

(5) The task force shall develop recommendations for all of the following:

(a) Enforceable regulatory standards for PFAS in drinking water, groundwater, and soil.

(b) A mechanism for the identification and cleanup of contaminated areas.

(c) Methods to address liability for contamination and financial responsibility for cleanup.

(d) Appropriate methods and technologies, considering cost, for cleanup and treatment of PFAS contamination.

(e) Funding sources and mechanisms for prioritizing the distribution of funds for cleanup and remediation of PFAS contamination.

(f) Methods to manage waste containing PFAS to prevent possible release or discharge into the environment which could cause contamination of drinking water, groundwater, and soil.

(g) Appropriate testing for and monitoring of PFAS in drinking water, groundwater, and soil to protect the public health and welfare.

(h) Methods to eliminate workplace exposure within the manufacturing and firefighting industries.

(6) The department shall provide staff to assist the task force in performing its duties.

(7) The task force shall convene no later than October 1, 2022. The task force shall submit an annual report on its progress and findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives by each October 1, beginning in 2023. In addition to the recommendations required by subsection (5), the report must also include the

following information:

(a) The current science on PFAS, including harmful levels and ingestion and exposure routes, with particular attention to significant developments.

(b) Geographic areas with particularly high levels of contamination identified in this state.

(c) Past and present actions by the state and federal government to address PFAS.

(8) This section is repealed July 1, 2026.

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

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 3, 2022

I respectfully request that **Senate Bill 7012**, relating to **Per- and Polyfluoroalkyl Substances Task Force**, 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

S-009 (01/2021)

The Florida Senate

APPEARANCE RECORD

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

February 28, 2022
Meeting Date

Appropriations
Committee

7012 PFAS
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jorge "George" Caspary

Phone 850-444-4860

Address 200 E Government Street
Street

Email JCaspary@cameron-cole.com

Pensacola FL 32502
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:

City of Pensacola

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/28/22
Meeting Date

Appropriations
Committee

SB 7012
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jeff Scala

Phone (727) 637-4081

Address 100 S Monroe
Street

Email jscala@fl-counties.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 Association of Counties

☐ 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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2/28/22
Meeting Date

Appropriations
Committee

SB 7012
Bill Number or Topic

Amendment Barcode (if applicable)

Name Rebecca O'Hara

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 28, 2022
Meeting Date

7012
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Darrick D McGhee, Sr

Phone (850) 321-6489

Address 537 East Park Avenue
Street

Email darrick@teamjb.com

Tallahassee FL 32301
City *State* *Zip*

Reset Form

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida 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)

CourtSmart Tag Report

Room: KB 412 **Case No.:** - **Type:**
Caption: Senate Appropriations Committee **Judge:**

Started: 2/28/2022 10:38:22 AM
Ends: 2/28/2022 7:18:42 PM Length: 08:40:21

10:38:23 AM Sen. Stargel (Chair)
10:40:59 AM S 1557
10:41:04 AM Sen. Baxley
10:43:25 AM Sen. Pizzo
10:43:35 AM Sen. Baxley
10:43:43 AM Sen. Pizzo
10:43:49 AM Sen. Baxley
10:43:52 AM Sen. Pizzo
10:44:20 AM Sen. Baxley
10:44:45 AM Sen. Pizzo
10:45:13 AM Sen. Baxley
10:45:34 AM Sen. Pizzo
10:45:56 AM Sen. Baxley
10:46:25 AM Sen. Pizzo
10:47:07 AM Sen. Baxley
10:47:22 AM Sen. Pizzo
10:47:27 AM Sen. Baxley
10:47:49 AM Sen. Pizzo
10:48:11 AM Sen. Baxley
10:48:14 AM Sen. Pizzo
10:48:58 AM Sen. Baxley
10:49:24 AM Sen. Pizzo
10:49:36 AM Sen. Stargel
10:49:50 AM Sen. Pizzo
10:50:15 AM Sen. Baxley
10:51:01 AM Sen. Pizzo
10:51:55 AM Sen. Book
10:52:29 AM Sen. Baxley
10:52:58 AM Sen. Book
10:53:28 AM Sen. Baxley
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10:58:41 AM Sen. Baxley
10:58:53 AM Sen. Book
10:59:43 AM Sen. Baxley
10:59:47 AM Sen. Book
11:00:29 AM Sen. Baxley
11:01:10 AM Sen. Book
11:01:35 AM Sen. Baxley
11:01:48 AM Sen. Book
11:02:14 AM Sen. Baxley
11:03:05 AM Sen. Book
11:03:35 AM Sen. Stargel
11:03:41 AM Sen. Book
11:04:06 AM Sen. Baxley

11:04:11 AM Sen. Gibson
11:04:30 AM Sen. Baxley
11:05:47 AM Sen. Gibson
11:06:02 AM Sen. Baxley
11:07:00 AM Sen. Gibson
11:07:20 AM Sen. Baxley
11:07:53 AM Sen. Gibson
11:08:27 AM Sen. Baxley
11:08:46 AM Sen. Gibson
11:09:21 AM Sen. Baxley
11:09:34 AM Sen. Gibson
11:10:07 AM Sen. Baxley
11:10:49 AM Sen. Gibson
11:10:59 AM Sen. Stargel
11:11:13 AM Sen. Gibson
11:11:26 AM Sen. Baxley
11:11:38 AM Sen. Stewart
11:12:12 AM Sen. Baxley
11:12:25 AM Sen. Stewart
11:12:41 AM Sen. Baxley
11:12:43 AM Sen. Stewart
11:12:54 AM Sen. Brandes
11:13:21 AM Sen. Baxley
11:13:27 AM Sen. Brandes
11:13:46 AM Sen. Baxley
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11:14:19 AM Sen. Baxley
11:14:25 AM Sen. Brandes
11:14:30 AM Sen. Baxley
11:14:36 AM Sen. Brandes
11:14:44 AM Sen. Baxley
11:15:23 AM Sen. Brandes
11:15:59 AM Sen. Baxley
11:16:02 AM Sen Brandes
11:16:13 AM Sen. Baxley
11:16:28 AM Sen. Brandes
11:16:51 AM Sen. Baxley
11:16:56 AM Sen. Brandes
11:17:16 AM Sen. Baxley
11:17:25 AM Sen. Powell
11:17:51 AM Sen. Baxley
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11:20:34 AM Sen. Powell
11:20:49 AM Sen. Baxley
11:20:59 AM Sen. Powell
11:21:28 AM Sen. Baxley
11:22:14 AM Sen. Powell
11:22:45 AM Sen. Baxley
11:23:10 AM Sen. Powell
11:23:33 AM Sen. Stargel
11:23:59 AM Sen. Powell
11:24:01 AM Sen. Rouson
11:24:50 AM Sen. Baxley

11:25:27 AM Sen. Gibson
11:25:58 AM Sen. Baxley
11:26:33 AM Sen. Gibson
11:26:48 AM Sen. Bean (Chair)
11:26:50 AM Sen. Baxley
11:27:03 AM Sen. Gibson
11:27:08 AM Sen. Baxley
11:27:30 AM Sen. Gibson
11:27:40 AM Sen. Stargel (Chair)
11:27:47 AM Am. 760288
11:27:53 AM Sen. Brandes
11:27:59 AM Am. 546314
11:28:00 AM Sen. Brandes
11:29:38 AM Sen. Gibson
11:30:21 AM Sen. Brandes
11:31:03 AM Sen. Gibson
11:31:27 AM Sen. Brandes
11:31:37 AM Joe Sanders
11:31:41 AM Richard Carling
11:31:44 AM Brandon Shaw (waives in support)
11:31:48 AM Robyn Johnson (waives in support)
11:31:50 AM Taina Marano (waives in support)
11:31:53 AM Aaron DiPietro, Florida Family Policy Council (waives in opposition)
11:31:59 AM Lynette Gee, Christian Family Coalition (waives in opposition)
11:32:02 AM Margaret Joseph (waives in opposition)
11:32:05 AM Brandi Andrews (waives in opposition)
11:32:09 AM Cassie Stephens (waives in opposition)
11:32:13 AM Susan Aertker, League of Women Voters Florida (waives in support)
11:32:22 AM James Kelly (waives in opposition)
11:32:23 AM Ed Wilson (waives in opposition)
11:32:26 AM Towson Fraser, Equality Florida (waives in support)
11:32:30 AM Keith Flaugh, Florida Citizens Alliance (waives in opposition)
11:32:32 AM Christian Joseph Walden (waives in support)
11:32:34 AM Kimberly Blanden (waives in support)
11:32:37 AM Kevin Tipton (waives in support)
11:32:41 AM Imani Lowe (waives in support)
11:32:43 AM John Mahaffy (waives in support)
11:32:46 AM Janelle Perez (waives in support)
11:32:49 AM Gianna Bonner (waives in support)
11:32:51 AM Austin Flanagan (waives in support)
11:32:54 AM Kinsey Duerr (waives in support)
11:32:57 AM Niclos Mathis (waives in support)
11:33:01 AM William Lawson (waives in support)
11:33:02 AM Ida Eskamani, Florida Rising, Florida Immigrant Coalition (waives in support)
11:33:07 AM Richard Taylor (waives in opposition)
11:33:09 AM Javier Gomez (waives in support)
11:33:13 AM Maxx Fenning (waives in support)
11:33:15 AM Lynn Ann Matley-Tobin (waives in support)
11:33:19 AM Anthony Verdigo, Christian Family Coalition (waives in opposition)
11:33:22 AM Pamela Mahaffy (waives in support)
11:33:30 AM Jon Harris Maurer, Equality Florida
11:34:13 AM Susan Aertker
11:35:14 AM January Littlejohn
11:36:18 AM Sen. Pizzo
11:37:07 AM J. Littlejohn
11:37:29 AM Sen. Pizzo
11:37:46 AM J. Littlejohn
11:37:49 AM Sen. Pizzo
11:38:01 AM J. Littlejohn
11:38:18 AM Sen. Pizzo
11:38:22 AM J. Littlejohn
11:38:26 AM Sen. Brandes

11:38:33 AM J. Littlejohn
11:38:36 AM Sen. Brandes
11:38:42 AM J. Littlejohn
11:39:03 AM Sen. Brandes
11:39:16 AM J. Littlejohn
11:39:25 AM Sen. Brandes
11:39:58 AM Sen. Pizzo
11:41:07 AM Sen. Bean (Chair)
11:41:09 AM Sen. Gibson
11:42:02 AM Sen. Baxley
11:42:49 AM Sen. Brandes
11:45:02 AM Sen. Stargel (Chair)
11:45:57 AM S 1557 (cont.)
11:47:21 AM Kimberly Keech (waives in opposition)
11:47:26 AM Robyn Johnson (waives in support)
11:47:32 AM Taina Marano (waives in opposition)
11:47:34 AM Barbara DeVane, Florida National Organization for Women (waives in opposition)
11:47:37 AM Holly Ballard, Florida Policy Institute (waives in opposition)
11:47:39 AM Donn Scott, Jr., Southern Poverty Law Center Action Fund (waives in opposition)
11:47:44 AM Karen Woodall, Florida Center for Fiscal and Economic Policy (waives in opposition)
11:47:49 AM Lynette Gee, Christian Family Coalition (waives in support)
11:47:51 AM Annie Filkowski, The Florida Alliance of Planned Parenthood Affiliates (waives in opposition)
11:47:56 AM Ella Keech (waives in opposition)
11:47:59 AM Larry Baker, Jr., (waives in opposition)
11:48:04 AM Sugtlana Dunn (waives in opposition)
11:48:07 AM Kara Gross, American Civil Liberties Union of Florida (waives in opposition)
11:48:09 AM Mark Barr (waives in opposition)
11:48:12 AM Nancy Lawther, Florida PTA (waives in opposition)
11:48:15 AM Devon Graham, Volunteer Director, American Atheists (waives in opposition)
11:48:18 AM James Kelly (waives in support)
11:48:20 AM Towson Fraser, Equality Florida (waives in opposition)
11:48:24 AM Susan Aertkafor, League of Women Voters Florida (waives in opposition)
11:48:28 AM Allison Lang (waives in opposition)
11:48:30 AM James Toften (waives in opposition)
11:48:33 AM Jesse McCarty, Executive Assistant County Attorney, Miami-Dade County (waives in opposition)
11:48:38 AM Mayah Silio (waives in opposition)
11:48:41 AM Rindala Alajaji, Equality Florida (waives in opposition)
11:48:47 AM Arthur Franco (waives in opposition)
11:48:49 AM Patricia Padilla (waives in opposition)
11:48:52 AM Kinsey Doerr (waives in opposition)
11:49:04 AM William Lawson (waives in opposition)
11:49:06 AM Gerry Showers (waives in opposition)
11:49:07 AM Austin Flanagan (waives in opposition)
11:49:09 AM John Mahaffy (waives in opposition)
11:49:11 AM Kimberly Blandon (waives in opposition)
11:49:13 AM Lynn Ann Matley-Tobin (waives in opposition)
11:49:17 AM Ida Eskamani, Florida Rising; Florida Immigrant Coalition (waives in opposition)
11:49:20 AM Niclos Mathis (waives in opposition)
11:49:22 AM Angie Gallo (waives in opposition)
11:49:24 AM Jada Gonzalez (waives in opposition)
11:49:27 AM Nye Davis, Equality Florida (waives in opposition)
11:49:30 AM Elizabeth Gilbert, Florida Student Power Network (waives in opposition)
11:49:33 AM Pamela Mahaffy (waives in opposition)
11:49:35 AM John Quinton (waives in opposition)
11:49:38 AM Ana Gueuara, Florida Student Power (waives in opposition)
11:50:45 AM Brandon Shaw
11:52:40 AM Dan VanTice
11:54:03 AM Shelly Rodden
11:54:22 AM Joseph Noll
11:56:17 AM Aaron DiPietro, Florida Family Policy Council
11:57:11 AM Sen. Bean (Chair)
11:57:17 AM Sen. Pizzo

11:57:34 AM A. Depitro
11:57:41 AM Sen. Pizzo
11:57:51 AM A. Depitro
11:58:01 AM Sen. Pizzo
11:58:10 AM A. Depitro
11:58:24 AM Sen. Brandes
11:58:40 AM A. Depitro
11:59:00 AM Sen. Stargel (Chair)
11:59:07 AM Kaylee Sandell
12:00:27 PM Kathryn Hagen
12:01:48 PM Chris O'Neill
12:02:46 PM January Littlejohn
12:03:19 PM Sen. Pizzo
12:03:25 PM J. Littlejohn
12:04:03 PM Sen. Pizzo
12:04:20 PM J. Littlejohn
12:04:36 PM Sen. Pizzo
12:04:48 PM J. Littlejohn
12:04:53 PM Will Larkins
12:06:48 PM John Mawer, Equality Florida
12:07:21 PM Michael Womack
12:09:37 PM Elizabeth Bercaw
12:11:09 PM Cassie Stephens
12:12:29 PM Lakey Love
12:14:16 PM Suzan Aertker
12:15:39 PM Christine Johnson
12:18:20 PM Sen. Bean (Chair)
12:18:23 PM Joe Saunders
12:20:06 PM Brandi Andrews
12:20:50 PM Jean Ekhoff
12:21:56 PM Paul Arons
12:23:38 PM Tamara Parker
12:24:51 PM Aragorn Auburn
12:26:19 PM Richard Carlins
12:28:13 PM Jeff Vail (waives in opposition)
12:28:17 PM Moye Becker (waives in opposition)
12:28:20 PM Bill Bunkley, Florida Ethics and Religious Liberty Commission (waives in support)
12:28:29 PM Nicole DeNicolo
12:29:11 PM Sen. Stargel (Chair)
12:29:17 PM Rowan Craig
12:30:31 PM Gianna Bonner
12:32:03 PM Janelle Perez
12:34:00 PM Margaret Joseph
12:35:06 PM Imani Lowe
12:36:41 PM Kevin Tipton
12:38:11 PM Christian Joseph Walden
12:39:27 PM Nicole Morse, American Federation of Labor- Congress of Industrial Organizations
12:40:45 PM Anthony Verdugo
12:42:40 PM Sen. Brandes
12:42:48 PM A. Verdugo
12:42:57 PM Sen. Brandes
12:43:06 PM A. Verdugo
12:43:52 PM Sen. Bean (Chair)
12:43:53 PM Sen. Pizzo
12:44:29 PM A. Verdugo
12:44:42 PM Sen. Pizzo
12:45:18 PM A. Verdugo
12:45:25 PM Sen. Pizzo
12:45:35 PM A. Verdugo
12:46:18 PM Sen. Pizzo
12:46:34 PM A. Verdugo
12:46:50 PM Sen. Pizzo

12:47:02 PM A. Verdugo
12:47:32 PM Sen. Pizzo
12:47:59 PM A. Verdugo
12:48:06 PM Sen. Pizzo
12:48:10 PM A. Verdugo
12:48:30 PM Javier Gomez
12:49:44 PM Maxx Fenning
12:51:36 PM Salvatore Vieira
12:53:27 PM Samantha Stockley
12:55:27 PM Ed Wilson
12:56:16 PM Laura Cobb
12:56:34 PM Sana Hafeez, Orlando Dream Defenders
12:58:04 PM Anna Dennison
1:00:01 PM Zander Moricz
1:01:48 PM Lynda Bell
1:04:00 PM Jennifer Jones (waives in opposition)
1:04:10 PM Tammy Riggiero
1:06:48 PM Jeff Prystajko, Equality Florida (waives in opposition)
1:06:50 PM Jackie Mason (waives in opposition)
1:06:58 PM Ruth Villamizor (waives in opposition)
1:07:03 PM Olivia Solomon (waives in opposition)
1:07:06 PM Jude Speegle (waives in opposition)
1:07:07 PM Troy Stevenson (waives in opposition)
1:07:10 PM K. Langh, Florida Citizens Alliance (waives in support)
1:07:13 PM Elizabeth Santander-Cozdero (waives in support)
1:07:21 PM Suzan Maurer (waives in opposition)
1:07:24 PM Nick Chinter (waives in opposition)
1:07:27 PM Wes Hodge (waives in opposition)
1:07:30 PM Rita Harnis (waives in opposition)
1:07:32 PM Jennifer Gasins (waives in opposition)
1:07:34 PM Tamma Sanchez (waives in support)
1:07:37 PM Liz Seaton, National LGBTQ Task Force Action Fund (waives in opposition)
1:07:39 PM Julie Williams (waives in opposition)
1:07:41 PM Hillary Cassel (waives in opposition)
1:07:44 PM Lorynn Gavin (waives in opposition)
1:07:46 PM Jonathan Kline (waives in opposition)
1:07:50 PM Gregory Rodriguez (waives in opposition)
1:07:53 PM Ida Eskamani, Florida Rising; Florida Immigrant Coalition (waives in opposition)
1:07:56 PM Megan Standhaff (waives in opposition)
1:08:05 PM Am. 760288
1:08:17 PM S 1557 (cont.)
1:08:49 PM Sen. Pizzo
1:10:25 PM Sen. Stewart
1:12:12 PM Sen. Stargel
1:12:40 PM Sen. Pizzo
1:12:58 PM Sen. Stargel
1:13:07 PM Sen. Pizzo
1:13:15 PM Sen. Stargel
1:13:31 PM Sen. Gibson
1:19:26 PM Sen. Book
1:23:56 PM Sen. Powell
1:27:25 PM Sen. Pizzo
1:35:54 PM Sen. Brandes
1:38:49 PM Sen. Stargel
1:41:45 PM Sen. Baxley
1:46:56 PM S 5301
1:47:19 PM Sen. Albritton
1:47:26 PM Am. 521994
1:47:38 PM Sen. Albritton
1:48:33 PM Sen. Gibson
1:48:49 PM Sen. Albritton
1:49:01 PM Sen. Brandes

1:49:16 PM Sen. Albritton
1:49:46 PM Sen. Brandes
1:49:53 PM Sen. Albritton
1:49:59 PM Sen. Brandes
1:50:04 PM Sen. Albritton
1:50:13 PM Sen. Gibson
1:50:58 PM S 5301 (cont.)
1:51:02 PM Sen. Albritton
1:51:33 PM Sen. Gibson
1:51:52 PM Sen. Albritton
1:53:47 PM S 7046
1:53:52 PM Sen. Brandes
1:54:22 PM Sen. Pizzo
1:54:34 PM Sen. Brandes
1:54:42 PM Sen. Pizzo
1:54:54 PM Sen. Brandes
1:55:00 PM Sen. Pizzo
1:55:05 PM Sen. Brandes
1:55:16 PM Matt Puckett, Florida Police Benevolent Association (waives in support)
1:55:31 PM Sen. Brandes
1:56:24 PM H 3
1:56:28 PM Sen. Hooper
1:59:07 PM Matt Dunagan, Florida Sheriffs Association (waives in support)
1:59:11 PM David Struhs, Foundation for Florida's Future (waives in support)
1:59:17 PM Matt Puckett, Florida Police Benevolent Association (waives in support)
1:59:23 PM Alexis Leroe, Step Up for Students (waives in support)
1:59:30 PM Sen. Gibson
2:00:03 PM Sen. Hooper
2:00:05 PM Sen. Gibson
2:00:34 PM Sen. Hooper
2:00:43 PM Sen. Gibson
2:01:09 PM Sen. Hooper
2:01:26 PM Sen. Gibson
2:02:07 PM Sen. Hooper
2:02:19 PM Sen. Gibson
2:02:26 PM Sen. Hooper
2:02:35 PM Sen. Gibson
2:02:49 PM Sen. Hooper
2:03:54 PM H 5011
2:03:58 PM Sen. Hudson
2:04:31 PM Am. 147946
2:04:32 PM Karen Woodall, Florida Center for Fiscal and Economic Policy (waives in opposition)
2:05:05 PM Sen. Pizzo
2:05:18 PM Sen. Hutson
2:05:46 PM H 5011 (cont.)
2:05:51 PM Sen. Gibson
2:06:46 PM Sen. Hutson
2:07:24 PM Sen. Gibson
2:07:31 PM Sen. Hutson
2:08:03 PM Sen. Gibson
2:08:09 PM Sen. Hutson
2:08:19 PM Sen. Gibson
2:08:42 PM Sen. Hutson
2:09:05 PM Sen. Gibson
2:09:26 PM Sen. Hutson
2:10:03 PM Sen. Gibson
2:10:15 PM Sen. Hutson
2:10:40 PM Sen. Gainer
2:10:56 PM Sen. Hutson
2:11:04 PM Sen. Gainer
2:11:09 PM Sen. Hutson
2:11:14 PM Sen. Gainer

2:11:22 PM Sen. Hutson
2:12:55 PM S 5015
2:13:03 PM Am. 392560
2:13:12 PM Sen. Hutson
2:13:59 PM Sen. Gainer
2:14:11 PM Sen. Hutson
2:14:40 PM Sen. Gainer
2:14:42 PM Sen. Hutson
2:14:46 PM Sen. Brandes
2:14:53 PM Sen. Hutson
2:15:01 PM Sen. Brandes
2:15:06 PM Sen. Hutson
2:15:10 PM Sen. Rouson
2:15:19 PM Sen. Hutson
2:15:45 PM S 5015 (cont.)
2:15:51 PM Sen. Gibson
2:16:14 PM Sen. Hutson
2:16:28 PM Sen. Gibson
2:16:36 PM Sen. Hutson
2:16:47 PM Sen. Gibson
2:17:13 PM Sen. Hutson
2:17:47 PM S 1078
2:18:55 PM Sen. Hutson
2:19:14 PM Sen. Brandes
2:20:23 PM Sen. Hutson
2:20:42 PM Sen. Brandes
2:20:44 PM Sen. Hutson
2:21:03 PM Sen. Brandes
2:21:06 PM Sen. Hutson
2:21:20 PM Sen. Brandes
2:21:33 PM Sen. Hutson
2:21:47 PM Sen. Brandes
2:22:01 PM Sen. Gibson
2:22:23 PM Am. 785588
2:22:30 PM Sen. Hutson
2:23:01 PM Am. 465108
2:23:31 PM Sen. Hutson
2:23:52 PM Am. 785588
2:23:59 PM Sen. Brandes
2:24:09 PM Sen. Hutson
2:25:07 PM Am. 359308
2:25:18 PM Sen. Hutson
2:26:09 PM Am. 520516
2:26:24 PM Sen. Hutson
2:26:42 PM S 1078 (cont.)
2:26:54 PM Colleen Stenstream
2:28:45 PM Betty Jo Tompkins, Aiken Soil and Water Conservation District
2:31:16 PM Audrey Kuipers
2:33:00 PM Sen. Stargel (Chair)
2:33:16 PM Sen. Brandes
2:33:24 PM A. Kuipers
2:33:41 PM Sen. Brandes
2:33:43 PM A. Kuipers
2:33:46 PM Christopher Pettit
2:36:12 PM Sen. Powell
2:36:27 PM C. Pettit
2:36:43 PM Sen. Powell
2:36:47 PM Sen. Hutson
2:37:14 PM C. Pettit
2:37:58 PM Sen. Hutson
2:38:15 PM C. Pettit
2:38:43 PM Susan Aertker, League of Women Voters Florida (waives in opposition)

2:38:46 PM Karen Woodall, Earth Justice (waives in opposition)
2:38:48 PM Lindsay Cross, Florida Conservation Voters (waives in opposition)
2:38:54 PM Buck M. Carpenter
2:40:39 PM Sen. Hutson
2:40:47 PM B. Carpenter
2:41:31 PM Sen. Brandes
2:41:38 PM B. Carpenter
2:42:10 PM Sen. Brandes
2:42:22 PM B. Carpenter
2:43:02 PM Sen. Broxson
2:43:22 PM B. Carpenter
2:44:17 PM Sen. Albritton
2:45:09 PM B. Carpenter
2:46:20 PM Nicole Crosby
2:49:00 PM Sen. Gainer
2:49:29 PM Sen. Gibson
2:50:24 PM Sen. Broxson
2:50:57 PM Sen. Brandes
2:52:43 PM Sen. Stewart
2:54:28 PM Sen. Powell
2:55:37 PM Sen. Albritton
2:57:18 PM Sen. Hutson
3:01:29 PM S 1670
3:01:32 PM Sen. Hutson
3:01:59 PM Am. 272518
3:02:05 PM Sen. Hutson
3:02:40 PM S 1670 (cont.)
3:02:43 PM Tara Taggart, Florida League of Cities (waives in support)
3:02:47 PM Jeff Scala, Florida Association of Counties (waives in support)
3:04:18 PM S 1694
3:04:29 PM Am. 570256
3:04:34 PM Sen. Hutson
3:04:53 PM S 1694 (cont.)
3:04:59 PM Tara Taggart, Florida League of Cities (waives in support)
3:05:01 PM Jeff Scala, Florida Association of Counties (waives in support)
3:05:50 PM S 1476
3:05:57 PM Sen. Wright
3:06:56 PM Michael Jackson, Florida Pharmacy Association (waives in support)
3:06:58 PM Joni Hunty, Halifax Health (waives in support)
3:07:00 PM Larry Williams, American Pharmacy Cooperative Providers (waives in support)
3:07:04 PM Claudia Dowant (waives in support)
3:07:13 PM Greg Black, National Association of Chain Drug Stores (waives in support)
3:07:18 PM Cynthia Henderson, Epic Pharmacies (waives in support)
3:08:10 PM S 466
3:08:23 PM Am. 529498
3:08:32 PM Sen. Torres
3:09:39 PM Am. 501066
3:09:46 PM S 466 (cont.)
3:09:49 PM Joe Marino, Florida is for Veterans, Inc. (waives in support)
3:09:57 PM Hammer Hartsell, Major General, Florida Department of Veterans' Affairs
3:10:03 PM Sen. Torres
3:11:07 PM S 1610
3:11:21 PM Sen. Rodriguez
3:11:52 PM Am. 445234
3:12:00 PM Sen. Rodriguez
3:12:27 PM S 1610 (cont.)
3:12:33 PM Sen. Pizzo
3:13:10 PM Sen. Rodriguez
3:14:19 PM S 196
3:14:23 PM Sen. Rodriguez
3:14:30 PM Am. 518736
3:14:50 PM Sen. Rodriguez

3:15:27 PM Am. 395542
3:15:33 PM Sen. Rodriguez
3:16:21 PM Trey Price, Executive Director of Florida Housing, Florida Housing Finance Corporation (waives in support)
3:16:39 PM Sen. Rodriguez
3:16:51 PM Am. 151346
3:16:56 PM Sen. Brandes
3:17:30 PM Trey Price, Executive Director of Florida Housing, Florida Housing Finance Corporation
3:17:42 PM Sen. Rodriguez
3:17:47 PM T. Price
3:18:31 PM Sen. Gibson
3:18:46 PM T. Price
3:19:37 PM Sen. Brandes
3:19:57 PM T. Price
3:20:14 PM Sen. Brandes
3:20:27 PM T. Price
3:20:45 PM Sen. Brandes
3:21:01 PM T. Price
3:21:31 PM Sen. Rodriguez
3:21:52 PM Sen. Brandes
3:22:37 PM Am. 193088
3:22:42 PM Sen. Brandes
3:23:40 PM Sen. Rodriguez
3:24:03 PM Sen. Gibson
3:24:53 PM Sen. Brandes
3:26:12 PM S 196 (cont.)
3:26:21 PM Steve Auger (waives in support)
3:26:30 PM Sen. Pizzo
3:27:32 PM Sen. Brandes
3:28:37 PM Sen. Rodriguez
3:29:52 PM S 1040
3:29:52 PM S 1042
3:29:58 PM S 1940
3:30:36 PM Sen. Brodeur
3:30:56 PM Paul Owens, 1,000 Friends of Florida (waives in support)
3:31:00 PM Jeff Scala, Florida Association of Counties (waives in support)
3:31:01 PM Rebecca O'Hara, Florida League of Cities (waives in support)
3:31:05 PM David Rathke, Resiliency Florida (waives in support)
3:31:08 PM Ellyn Bogdanoff, American Flood Coalition Action (waives in support)
3:32:14 PM S 1950
3:32:15 PM Sen. Brodeur
3:32:21 PM Am. 625186
3:32:27 PM Sen. Brodeur
3:33:21 PM Am. 376938
3:33:27 PM Sen. Brodeur
3:34:08 PM Am. 567896
3:34:13 PM Sen. Brodeur
3:34:31 PM Am. 977740
3:34:38 PM Sen. Bean
3:35:42 PM Sen. Pizzo
3:35:56 PM Sen. Bean
3:36:18 PM Sen. Rouson
3:36:47 PM Sen. Bean
3:37:18 PM Sen. Rouson
3:37:35 PM Sen. Bean
3:38:11 PM Am. 567896
3:38:23 PM Am. 399056
3:38:31 PM Sen. Brodeur
3:39:04 PM Ellen Navarro Anderson, Moffitt Cancer Center (waives in support)
3:39:14 PM Am. 963780
3:39:29 PM Sen. Brodeur
3:39:34 PM Am. 329278

3:39:44 PM Sen. Bean
3:40:46 PM Sen. Brodeur
3:40:59 PM Am. 963780
3:41:32 PM Sen. Brodeur
3:41:38 PM S 1950 (cont.)
3:41:44 PM Cody Farrill, Agency for Health Care Administration (waives in support)
3:41:49 PM Sen. Brodeur
3:42:42 PM H 1
3:42:53 PM Sen. Brodeur
3:43:21 PM Sen. Powell
3:43:35 PM Sen. Brodeur
3:43:44 PM Sen. Powell
3:43:58 PM Sen. Brodeur
3:44:37 PM Sen. Gainer
3:44:50 PM Sen. Brodeur
3:45:14 PM Sen. Gainer
3:45:23 PM Sen. Brandes
3:45:31 PM Sen. Brodeur
3:45:48 PM Matt Dunagan, Florida Sheriffs Association (waives in support)
3:45:53 PM Matt Puckett, Florida Police Benevolent Association (waives in support)
3:45:57 PM Danielle Scoggins, Florida Realtors (waives in support)
3:46:00 PM Bob McKee, Florida Association of Counties (waives in opposition)
3:46:08 PM Sen. Powell
3:47:03 PM Sen. Brodeur
3:48:11 PM S 1563
3:48:23 PM Sen. Brodeur
3:48:47 PM Matt Puckett, Florida Police Benevolent Association (waives in support)
3:48:50 PM Chase Mitchell, Chief Financial Officer, State Fire Marshal, Jimmy Patronis (waives in support)
3:48:55 PM Danielle Scoggins, Florida Realtors (waives in support)
3:49:00 PM Sen. Brodeur
3:49:48 PM S 1728
3:50:00 PM Am. 646840
3:50:08 PM Am. 892324
3:50:14 PM Sen. Boyd
3:55:05 PM Am. 700006
3:55:17 PM Sen. Rouson
3:57:02 PM Adam Basford (waives in support)
3:57:07 PM William Haselden
3:59:58 PM Sen. Boyd
4:01:26 PM Sen. Rouson
4:02:06 PM Am. 336290
4:02:16 PM Sen. Rouson
4:03:28 PM Sen. Powell
4:03:57 PM Sen. Rouson
4:04:23 PM Sen. Gibson
4:05:06 PM William Haselden
4:07:01 PM Carolyn Johnson, Florida Chamber of Commerce (waives in opposition)
4:07:15 PM Sen. Boyd
4:08:05 PM Sen. Bracy
4:08:35 PM Sen. Rouson
4:09:43 PM William Haselden
4:12:07 PM Greg Black, R Street Institute (waives in support)
4:12:09 PM Carolyn Johnson, Florida Chamber of Commerce (waives in support)
4:12:15 PM BG Murphy, Florida Association of Insurance Agents (waives in support)
4:12:19 PM Scott Matiyow, Personal Insurance Federation Florida (waives in support)
4:12:23 PM Adam Basford, Associated Industries of Florida (waives in support)
4:12:26 PM Christine Ashburn, Citizens Property Insurance (waives in support)
4:12:33 PM Amanda Fraser, American Property Casualty Insurance Association (waives in support)
4:12:38 PM Gary Guzzo, Florida Insurance Council
4:14:59 PM Paul Handerhand, FAIR
4:16:37 PM Hillary Cassel, Florida Policyholders Cooperative
4:19:32 PM Sen. Pizzo

4:19:51 PM H. Cassel
4:20:00 PM Sen. Pizzo
4:20:07 PM H. Cassel
4:20:13 PM Sen. Pizzo
4:20:32 PM H. Cassel
4:20:38 PM Sen. Brandes
4:20:47 PM H. Cassel
4:21:08 PM Sen. Brandes
4:21:12 PM H. Cassel
4:21:28 PM Sen. Brandes
4:21:32 PM H. Cassel
4:21:34 PM Steve Gellyr, Florida Association of Public Insurance Adjusters
4:24:39 PM Sen. Pizzo
4:24:39 PM S 1728 (cont.)
4:26:00 PM Sen. Brandes
4:27:12 PM Sen. Boyd
4:29:22 PM S 1874
4:29:40 PM Am. 565284
4:30:04 PM Am. 325996
4:30:17 PM Sen. Boyd
4:30:33 PM S 1874 (cont.)
4:30:36 PM Tasha Carter, Office of the Insurance Consumer Advocate (waives in support)
4:30:41 PM Cally Kushner (waives in support)
4:30:45 PM Danny Kushner (waives in support)
4:30:48 PM Julie Kelly
4:30:57 PM Kelly Minter
4:31:05 PM Austin Stowers, Department of Financial Services
4:31:11 PM Tawnya Martin
4:32:10 PM S 554
4:32:19 PM Sen. Cruz
4:33:43 PM S 1292
4:33:57 PM Am. 895176
4:34:03 PM Sen. Gruters
4:34:41 PM Am. 880686
4:34:48 PM Sen. Gruters
4:35:15 PM S 1292 (cont.)
4:35:19 PM Sen. Gibson
4:36:18 PM Sen. Gruters
4:36:36 PM Sen. Gibson
4:36:45 PM Sen. Gruters
4:36:49 PM Sen. Gibson
4:37:01 PM Reggie Garcia, Florida Justice Association (waives in support)
4:37:06 PM Chase Mitchell, Chief Financial Officer, Jimmy Patronis
4:37:10 PM Tasha Carter, Office of the Insurance Consumer Advocate (waives in support)
4:37:15 PM Paul Handerhan, FAIR (waives in support)
4:37:22 PM Sen. Gibson
4:38:25 PM Sen. Gruters
4:39:25 PM S 1382
4:39:35 PM Am. 604478
4:39:44 PM Sen. Gruters
4:41:17 PM Sen. Pizzo
4:41:27 PM Sen. Gruters
4:41:29 PM Sen. Pizzo
4:41:36 PM Sen. Gruters
4:43:23 PM Sen. Pizzo
4:43:30 PM Sen. Gruters
4:44:00 PM Sen. Brandes
4:44:06 PM Sen. Gruters
4:44:59 PM Sen. Brandes
4:45:06 PM Sen. Gruters
4:45:10 PM Sen. Brandes
4:45:22 PM Sen. Gruters

4:46:08 PM Sen. Brandes
4:46:15 PM Sen. Gruters
4:47:07 PM Am. 799108
4:47:27 PM Sen. Gruters
4:47:37 PM Am. 604478
4:47:39 PM Lisa Vickers, Florida Department of Revenue
4:49:13 PM Sen. Pizzo
4:49:21 PM L. Vickers
4:50:10 PM Sen. Brandes
4:50:24 PM L. Vickers
4:51:15 PM Jim Zingale, Florida Department of Revenue
4:51:29 PM S 1382 (cont.)
4:51:30 PM Tim Nungosser, National Federation of Independent Business
4:55:32 PM Patrick Loebig
4:59:57 PM Sen. Pizzo
5:00:13 PM P. Loebig
5:01:30 PM Sen. Gruters
5:02:54 PM S 1796
5:02:59 PM Sen. Gruters
5:03:34 PM Am. 797882
5:03:47 PM Am. 144186
5:03:49 PM Sen. Gruters
5:06:23 PM Am.836940
5:06:32 PM Shannon Novey
5:06:37 PM Am. 855360
5:06:45 PM Sen. Pizzo
5:07:21 PM Andrea Reid
5:07:57 PM Shannon Novey (waives in support)
5:08:11 PM Sen. Gruters
5:08:27 PM Sen. Pizzo
5:09:42 PM Am. 144186
5:09:50 PM Shannon Novey
5:12:34 PM S 1796 (cont.)
5:13:13 PM Sen. Gibson
5:13:37 PM Sen. Gruters
5:13:43 PM Sen. Gibson
5:14:20 PM Sen. Gruters
5:14:36 PM Sen. Gruters
5:15:02 PM Sen. Gibson
5:15:10 PM Sen. Gruters
5:15:17 PM Sen. Gibson
5:15:45 PM Sen. Gruters
5:16:05 PM Sen. Pizzo
5:16:30 PM Sen. Gruters
5:16:33 PM Sen. Pizzo
5:16:47 PM Sen. Gruters
5:16:51 PM Sen. Pizzo
5:16:57 PM Sen. Gruters
5:17:41 PM Sen. Pizzo
5:17:45 PM Sen. Gruters
5:17:48 PM Sen. Pizzo
5:17:58 PM Sen. Gruters
5:18:24 PM Sen. Pizzo
5:19:50 PM Sen. Gruters
5:20:58 PM Sen. Pizzo
5:21:06 PM Sen. Gruters
5:21:33 PM Stephanie Favata (waives in support)
5:21:36 PM Marc Johnson, Florida Family Fairness (waives in support)
5:21:39 PM Joyy Smith (waives in support)
5:21:44 PM Sarah Aohmy (waives in opposition)
5:21:49 PM Barbara DeVane, Florida National Organization for Women (waives in opposition)
5:21:54 PM Karen Woodall, Florida Center for Fiscal and Economic Policy (waives in opposition)

5:22:03 PM Susan Aertker, League of Women Voters Florida (waives in opposition)
5:22:31 PM Andrea Reid
5:24:24 PM Sen. Stargel
5:24:40 PM A. Reid
5:25:30 PM Vernon Askegard (waives in support)
5:25:39 PM Deborah Shultz (waives in support)
5:25:44 PM Alan Frisher, Certified Divorce Financial Analyst; Chartered Life Underwriter (waives in support)
5:25:48 PM Deborah Gray
5:29:11 PM Camille Fiveash
5:31:57 PM Sen. Pizzo
5:32:08 PM C. Fiveash
5:32:20 PM Sonia Delgado
5:34:06 PM Michael Buhler
5:34:08 PM Shannon Novey
5:34:19 PM Carla McAuliffe
5:38:28 PM John Fromuloro
5:38:39 PM Natalie Willis
5:39:53 PM Shelly Moxon
5:43:13 PM George Smith
5:43:23 PM Alan Collin
5:44:33 PM Sen. Gainer
5:45:25 PM Sen. Gruters
5:50:13 PM S 1010
5:50:19 PM Sen. Gibson
5:51:33 PM Am. 920488
5:51:40 PM Sen. Gibson
5:52:28 PM Corinne Mixon, Florida Academy of Physician Assistants (waives in support)
5:52:41 PM S 1010 (cont.)
5:52:53 PM Corinne Mixon, Florida Academy of Physician Assistants (waives in support)
5:53:58 PM S 988
5:54:11 PM Sen. Garcia
5:54:32 PM Am. 799882
5:54:50 PM Sen. Garcia
5:56:27 PM Cody Farril, Chief of Staff, Agency for Health Care Administration (waives in support)
5:56:32 PM Jason Hand, Florida Senior Living Association
5:57:35 PM S 988 (cont.)
5:57:50 PM Sen. Gibson
5:58:49 PM Sen. Bean
5:59:07 PM Sen. Garcia
5:59:24 PM Sen. Gibson
5:59:31 PM Cody Farril, Chief of Staff, Agency for Health Care Administration
5:59:59 PM Sen. Garcia
6:00:59 PM S 536
6:01:09 PM Am. 734958
6:01:13 PM Sen. Diaz
6:02:06 PM Jim Spratt, Associated Industries of Florida (waives in support)
6:02:18 PM S 536 (cont.)
6:02:23 PM Carolyn Johnson, Florida Chamber of Commerce (waives in support)
6:02:26 PM Christian Camara, Institute for Justice (waives in support)
6:02:46 PM Sen. Bean
6:03:30 PM S 268
6:03:38 PM Am. 430822
6:03:44 PM S 268 (cont.)
6:03:50 PM Sen. Diaz
6:04:22 PM Christian Camara (waives in support)
6:04:32 PM Tama Sanchez (waives in support)
6:04:37 PM Martha Roth Solomon Reis (waives in support)
6:04:53 PM Ivis Ramirez (waives in support)
6:05:01 PM Ruth Villamizor
6:05:12 PM Elizabeth Santander-Cordero
6:05:21 PM Anthony Verdugo, Christian Family Coalition
6:05:27 PM Susan Aertker

6:08:45 PM Sen. Diaz
6:09:52 PM S 1302
6:09:57 PM Sen. Burgess
6:10:14 PM Am. 761772
6:10:22 PM Sen. Burgess
6:10:59 PM S 1302 (cont.)
6:11:04 PM Aaron Wayt, Florida Association of Criminal Defense Lawyers (waives in support)
6:11:08 PM Michelle Jackson (waives in support)
6:11:11 PM Margarita Romo (waives in support)
6:11:14 PM Subash Kateel (waives in support)
6:11:19 PM Nadeska Concha (waives in support)
6:11:23 PM Karen Woodall, Florida Center for Fiscal and Economic Policy (waives in support)
6:11:28 PM Donn Scott, Jr., Southern Poverty Law Center Action Fund (waives in support)
6:11:30 PM Adam Basford, Associated Industries of Florida (waives in support)
6:12:25 PM S 1710
6:12:32 PM Am. 483144
6:12:35 PM Am. 208562
6:13:02 PM Sen. Bradley
6:14:49 PM Sen. Hooper
6:15:14 PM Sen. Bradley
6:15:55 PM Ken Burke (waives in support)
6:15:58 PM Doug Franks
6:17:01 PM Marcia Friedman (waives in opposition)
6:17:09 PM Hillary Hogul (waives in opposition)
6:17:14 PM Victoria Heuler
6:18:34 PM Rey Contreras
6:21:13 PM Becky HarBor
6:22:44 PM Rick Black
6:24:18 PM Sen. Bradley
6:25:46 PM S 1710 (cont.)
6:25:53 PM Jason Harrell, Florida Court Clerks and Comptrollers (waives in support)
6:25:57 PM Victoria Heuler
6:26:06 PM Becky HarBor
6:26:26 PM Sen. Bean
6:27:15 PM S 1426
6:27:18 PM Sen. Burgess
6:28:01 PM Am. 666660
6:28:09 PM Am. 638546
6:28:13 PM Am. 897990
6:28:27 PM Sen. Burgess
6:28:55 PM Am. 157718
6:29:00 PM Sen. Burgess
6:29:38 PM S 1426 (cont.)
6:29:57 PM Sen. Gibson
6:30:09 PM Sen. Burgess
6:31:16 PM Sen. Gibson
6:31:33 PM Sen. Burgess
6:32:09 PM Sen. Gibson
6:32:43 PM Sen. Burgess
6:33:06 PM Frank Bernardino, Polk County (waives in support)
6:33:10 PM Edgar Fernandez, Florida Water Advocates (waives in support)
6:33:13 PM David Rathke, Resiliency Florida (waives in support)
6:33:19 PM Susan Aertkenfor, League of Women Voters Florida (waives in opposition)
6:33:31 PM Sen. Burgess
6:34:25 PM Sen. Bean (Chair)
6:34:31 PM S 578
6:34:47 PM Am. 949840
6:35:14 PM Sen. Hooper
6:35:18 PM S 578 (cont.)
6:35:23 PM Nancy Stewart, Federation of Manufactured Home Owners of Florida, Inc. (waives in support)
6:35:29 PM Ed Chase, Palm Beach County (waives in support)
6:35:40 PM Sen. Hooper

6:36:34 PM S 768
6:36:42 PM Sen. Rodriguez
6:36:55 PM Am. 134610
6:37:01 PM Sen. Rouson
6:39:09 PM Sen. Bracy
6:39:24 PM Sen. Rouson
6:40:12 PM Sen. Rodriguez
6:40:20 PM Sen. Brandes
6:40:50 PM Am. 910204
6:40:59 PM Am. 313234
6:41:06 PM Am. 361620
6:41:10 PM Sen. Rodriquez
6:41:39 PM Am. 603264
6:41:47 PM Sen. Rodriguez
6:42:27 PM Melissa Jaacks, Executive Director, Florida Birth-Related Neurological Injury Compensation Association
6:42:40 PM Brian Jogerst, Florida Association of Healthy Start Coalitions (waives in support)
6:43:03 PM Am. 209168
6:43:12 PM Sen. Rodriguez
6:43:34 PM Am. 709480
6:43:39 PM Am. 124218
6:43:49 PM S 768 (cont.)
6:44:01 PM Sen. Rodriguez
6:45:09 PM S 1798
6:45:13 PM Sen. Book
6:46:04 PM Am. 729720
6:46:12 PM Sen. Pizzo
6:46:48 PM Sen. Book
6:47:10 PM S 1798 (cont.)
6:47:23 PM Keith Flaugh, Florida Citizens Alliance (waives in support)
6:48:30 PM Sen. Stargel (Chair)
6:48:59 PM S 160
6:49:08 PM Am. 915896
6:49:13 PM S 160 (cont.)
6:49:15 PM Sen. Harrell
6:49:20 PM Melissa McKinlay, Commissioner, Palm Beach County (waives in support)
6:49:22 PM Matt Puckett, Florida Police Benevolent Association (waives in support)
6:50:07 PM S 358
6:50:14 PM Am. 712708
6:50:19 PM S 358 (cont.)
6:50:22 PM Sen. Rodriguez
6:51:05 PM S 390
6:51:09 PM Sen. Book
6:51:24 PM Olivia Babis, Disability Rights Florida (waives in support)
6:52:13 PM S 398
6:52:19 PM Am. 353234
6:52:26 PM S 358 (cont.)
6:52:30 PM Sen. Hooper
6:53:30 PM S 552
6:53:35 PM Am. 589784
6:53:42 PM S 552 (cont.)
6:53:43 PM Sen. Boyd
6:53:49 PM Jorge Chamizo, New Venture Fund (waives in support)
6:53:51 PM Tom Bexley
6:53:56 PM Jason Harrell, Florida Court Clerks and Comptrollers (waives in support)
6:54:36 PM S 752
6:54:44 PM Am. 529550
6:54:50 PM Sen. Gainer
6:54:50 PM S 752 (cont.)
6:55:23 PM Aaron Wayt (waives in support)
6:55:26 PM Matt Puckett, Florida Police Benevolent Association (waives in support)
6:56:06 PM S 802
6:56:12 PM Am. 347860

6:56:18 PM Sen. Gruters
6:56:24 PM S 802 (cont.)
6:56:55 PM Danielle Thomas, Florida School Boards Association (waives in support)
6:57:01 PM Angie Gallo, Alliance 4 Public Schools (waives in support)
6:57:18 PM S 898
6:57:29 PM Sen. Stewart
6:57:35 PM Budman DeVone, Florida NOW (waives in support)
6:57:38 PM Kelly Mallette, Florida Apartment Association (waives in support)
6:58:16 PM S 1060
6:58:21 PM Sen. Hutson
6:58:33 PM Angie Gallo, Alliance 4 Public Schools (waives in support)
6:59:17 PM S 1210
6:59:22 PM Sen. Albritton
6:59:36 PM Adam Basford, Associated Industries of Florida
6:59:39 PM Lindsay Cross, Florida Conservation Voters (waives in opposition)
7:00:25 PM S 1358
7:00:30 PM Sen. Rouson
7:01:21 PM S 1430
7:01:26 PM Am. 732288
7:01:31 PM S 1430 (cont.)
7:01:37 PM Sen. Burgess
7:01:44 PM Greg Black, R Street Institute (waives in support)
7:02:28 PM S 1436
7:02:32 PM Sen. Garcia
7:02:42 PM Austin Stowers, Chief Financial Officer and State Fire Marshal, Jimmy Patronis (waives in support)
7:03:25 PM S 1452
7:03:32 PM Sen. Book
7:04:21 PM S 1474
7:04:27 PM Am. 422484
7:04:33 PM S 1474 (cont.)
7:04:38 PM Sen. Bradley
7:04:44 PM Cynthia Henderson, Florida Association of Security Companies (waives in support)
7:04:47 PM Amanda Fraser, G45 Security (waives in support)
7:05:32 PM S 1518
7:05:36 PM Sen. Berman
7:05:46 PM Rob Johnson, March of Dimes (waives in support)
7:05:48 PM Aaron Wayt, Florida Association of Criminal Defense Lawyers (waives in support)
7:06:24 PM S 1556
7:06:31 PM Am. 773696
7:06:36 PM S 1556 (cont.)
7:06:41 PM Sen. Gruters
7:06:47 PM Paul Owens, 1,000 Friends of Florida (waives in opposition)
7:07:24 PM S 1582
7:07:30 PM Sen. Harrell
7:08:24 PM S 1600
7:08:30 PM Am. 534076
7:08:38 PM S 1600 (cont.)
7:08:46 PM Sen. Bradley
7:09:31 PM S 1682
7:09:40 PM Sen. Pizzo
7:10:28 PM S 1708
7:10:31 PM Sen. Garcia
7:11:18 PM S 1800
7:11:25 PM Am. 711618
7:11:31 PM S 1800 (cont.)
7:11:32 PM Sen. Boyd
7:12:15 PM S 1802
7:12:20 PM Am. 224394
7:12:22 PM S 1802 (cont.)
7:12:28 PM Sen. Boyd
7:13:11 PM S 1952
7:13:18 PM Am. 705416

7:13:24 PM S 1952 (cont.)
7:13:30 PM Sen. Albritton
7:13:40 PM Abby Vail, KPMG (waives in support)
7:14:18 PM S 7012
7:14:24 PM Am. 972752
7:14:31 PM Sen. Brodeur
7:14:35 PM S 7012 (cont.)
7:14:44 PM Jorge Casparry, City of Pensacola (waives in support)
7:14:48 PM Jeff Scala, Florida Association of Counties (waives in support)
7:14:52 PM Rebecca O'Hara, Florida League of Cities (waives in support)
7:14:55 PM Darrick McGhee, Florida Airports Council (waives in support)
7:16:00 PM Sen. Stargel
7:18:14 PM Sen. Gibson